

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 10
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:)	
)	EPA Docket No. 10-2012-0211
Conda/Woodall Mountain Phosphate)	
Mine Site, Caribou County, Idaho)	
)	
)	
J.R. Simplot Company,)	
Respondent)	

ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR PERFORMANCE
OF A REMOVAL ACTION
AT CONDA/WOODALL MOUNTAIN PHOSPHATE
MINE, PEDRO CREEK OVERBURDEN DISPOSAL AREA
IN SOUTHEASTERN IDAHO

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement/CO”) is entered into voluntarily by the Idaho Department of Environmental Quality (“IDEQ”), the United States Environmental Protection Agency (“EPA”), the United States Department of the Interior (“DOI”), Bureau of Land Management (“BLM”), and the J.R. Simplot Company (“Simplot”) (collectively, the “Parties” or alone a “Party”). This Settlement Agreement/CO provides for the performance of a removal action by Simplot and the reimbursement of certain response costs incurred by the United States and IDEQ at or in connection with the Pedro Creek Overburden Disposal Area (“ODA”) within the Conda/Woodall Mountain Phosphate Mine Site located in Caribou County, Idaho.
2. The Site is located partly on public land and/or private lands that are subject to the jurisdiction of IDEQ, EPA, the Idaho Department of Lands (IDL) and/or BLM. A more detailed description of the Site is provided in Section III of this Settlement Agreement (Definitions).
3. The Work required for performance of the removal action for the Site is specified in the Statement of Work (“SOW”) attached and incorporated by reference as Appendix 1 to this Settlement Agreement, and is governed by this Agreement.
4. This Settlement Agreement/CO is entered into by the United States under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. This Settlement Agreement/CO is issued by IDEQ pursuant to Idaho’s Environmental Protection & Health Act (EPHA), Idaho Code §§ 39-101 to 39-130, the Hazardous Waste Management Act of Idaho (HWMA), Idaho Code §§ 39-4401 to 39-4432, Idaho’s Water Quality Act, Idaho Code §§ 39-3601 *et seq.*, and the rules and standards promulgated pursuant thereto. Without admitting any liability, by signing this Settlement Agreement/CO Simplot agrees to the terms and conditions of this Settlement Agreement without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.
5. IDEQ will be the lead agency for the purpose of coordinating communication among the Parties and serving as the main point of contact with Simplot. IDEQ will communicate in writing to Simplot both IDEQ and EPA’s decisions. IDEQ will also be the lead agency for implementation of state law. EPA is the lead agency for the purpose of implementation and oversight of response actions pursuant to CERCLA. BLM will exercise its CERCLA authority on lands at the ODA subject to BLM’s jurisdiction, custody or control. DOI’s U.S. Fish and Wildlife Service (“FWS”) and the Shoshone-Bannock Tribes (Tribes) have elected to participate at the Site as Support Agencies.
6. In any action to enforce the terms of this Settlement Agreement/CO, the Parties agree not to contest its validity or the authority and jurisdiction of the United States or the State of Idaho to issue and enforce this Settlement Agreement, and the Parties agree to comply with and be bound by the terms and conditions of this Settlement Agreement. In

addition, the Parties agree not to contest the authority and jurisdiction of the IDEQ, EPA, BLM and FWS to enforce the provisions in Section XVI (Payment of EPA, DOI, and Tribe Response Costs) and Section XVII (Payment of IDEQ Response Costs). By signing this Settlement Agreement/CO, however, Simplot does not concede or waive its right to object to the authority of the United States or the IDEQ to issue, take, or enforce any other order or action relating to this Site. EPA, BLM, IDEQ and Simplot recognize that this Settlement Agreement/CO has been negotiated in good faith and that the actions undertaken by Simplot in accordance with this Settlement Agreement/CO do not constitute an admission of any liability. Simplot does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement through a work takeover or enforce this Settlement Agreement/CO, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement/CO.

7. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or his/her designee, has concurred in this Settlement Agreement/CO, in accordance with the requirements of Section 4 of Executive Order 12580 (52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R., 1987 Compilation, p. 193).

II. PARTIES BOUND

2.1 This Settlement Agreement/CO shall apply to and be binding upon EPA, IDEQ, BLM, and upon Simplot and its successors and assigns. Any change in ownership or corporate status of Simplot including, but not limited to, any transfer of assets or real or personal property shall not alter Simplot's obligation to comply with the requirements of this Settlement Agreement or to ensure compliance by any successor or assign of Simplot, regardless of whether Simplot continues to exist following such transaction. The signatories to the Settlement Agreement certify that they are authorized to execute and legally bind the Parties they represent to this Settlement Agreement.

2.2 Simplot shall provide a copy of this Settlement Agreement/CO to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the Settlement Agreement/CO within fourteen (14) days after the Effective Date of this Settlement Agreement/CO or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement Agreement/CO and its Appendices. Notwithstanding the provisions of any such contract, Simplot is, and shall remain, responsible for compliance with this Settlement Agreement.

III. DEFINITIONS

3.1 Unless otherwise expressly provided herein, terms used in this Settlement Agreement/CO which are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement/CO or in the attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the Action Memorandum relating to the ODA signed on July 13, 2011, by Director of EPA’s Office of Environmental Cleanup, the Director of the Department of Environmental Quality, and the Idaho State Director of BLM, and all attachments thereto. The “Action Memorandum” is attached as Appendix 2.

“BLM” shall mean the United States Department of the Interior, Bureau of Land Management.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Day” shall mean a calendar day unless expressly stated to be a Working Day. “Working Day” shall mean a day other than Saturday, Sunday, or a federal holiday. In computing any period of time under this Settlement Agreement/CO, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

“Deliverable” shall mean the documents that Simplot is required to submit pursuant to this Settlement Agreement/CO, the SOW, any approved work plans, and any additional documents identified in writing by under Section XXX (“Additional Removal Action”) of this Settlement Agreement/CO. All Deliverables under this Settlement Agreement/CO are subject to review, comment, and approval as described in Paragraph 9.3 of this Settlement Agreement/CO.

“DOI” shall mean the United States Department of the Interior.

“Effective Date” shall be the date on which the Settlement Agreement has been executed by all Parties and concurred in by the United States Department of Justice.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Future Response Costs” shall mean all direct and indirect costs incurred after the Effective Date, by EPA, IDEQ, and the Support Agencies designated herein in connection with this Settlement Agreement including, but not limited to, oversight, review and performance of the Work performed hereunder; time and travel costs; contractor costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this Settlement Agreement; review, modification, and approval or disapproval of reports; the costs incurred pursuant to 22.3 (“Work Takeover”); and any other costs directly incurred in overseeing this Settlement Agreement.

“FWS” shall mean the United States Department of the Interior, U.S. Fish and Wildlife Service.

“IDEQ” shall mean the State of Idaho Department of Environmental Quality.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and amendments thereto.

“ODA” shall mean the Pedro Creek ODA as depicted on the map attached to this Settlement Agreement/CO as Appendix 3, which is incorporated by reference into this Settlement Agreement/CO.

“Paragraph” shall mean a portion of this Settlement Agreement/CO identified by an Arabic numeral.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement/CO identified by a Roman numeral.

“Settlement Agreement/CO” shall mean this Settlement Agreement/CO and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement/CO and any appendix, this Settlement Agreement/CO shall control.

“Site” shall mean the Conda/Woodall Mountain Mine Site approximately 8 miles northeast of Soda Springs, Idaho, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation and materials handling. The Site is located on State and private lands and on public lands administered by the BLM. The ODA that is the subject of this Settlement Agreement/CO is located within the boundaries of the Site and is described on the map attached to this Settlement Agreement/CO as Appendix 3, which is incorporated by reference into this Settlement Agreement/CO.

“Statement of Work” or “SOW” shall mean the document that describes in detail the Work to be performed by Simplot to implement the removal action, as set forth in Appendix 1 to this Settlement Agreement/CO, and any modifications made thereto in accordance with Section XXIX of this Settlement Agreement/CO.

“Support Agency” shall mean an agency that provides a support agency coordinator or project manager to furnish necessary data to EPA, or that reviews response data and documents, and/or provides other assistance requested by the EPA Remedial

Project Manager and IDEQ Project Manager. The Tribes, BLM, and FWS are Support Agencies for the purpose of this Settlement Agreement/CO.

“Tribes” shall mean the Shoshone-Bannock Indian Tribes residing on the Fort Hall reservation near Pocatello, Idaho.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any hazardous wastes as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); 5) “pollutants” as defined in IDAPA 58.01.02.010.731; 6) “contaminants” as defined in IDAPA 58.01.11.007.10; 7) “hazardous materials” as defined in IDAPA 58.01.02.010.40; or 8) “deleterious materials” as defined in IDAPA 58.01.02.010.16.

“Work” shall mean all tasks that Simplot is required to perform pursuant to this Settlement Agreement/CO, and its attached Appendices, and all Deliverables produced pursuant to this Settlement Agreement/CO.

IV. FINDINGS OF FACT BY THE EPA, IDEQ AND BLM

4.1 The Conda/Woodall Mountain Phosphate Mine is an inactive phosphate mine located in Caribou County, Idaho. The Mine is located approximately eight miles northeast of the nearest community, Soda Springs, Idaho. The City of Soda Springs has a population of approximately 3,400. The ODA is located at Latitude: 42° 44’ 50” N Longitude: 111° 30’ 39” W. Releases from the ODA have resulted in exceedances of surface water standards along Pedro Creek during high flow conditions from its headwaters at the base of the ODA to the confluence with Trail Creek, approximately 2.3 miles to the east.

4.2 The ODA is located on State, public and private lands. Private property belonging to Ms. Alicia Dredge is located approximately 350 feet east of the toe of the ODA. No residents live within the Pedro Creek sub-basin. The nearest residences are ranch houses, used seasonally, on the Dredge property (a.k.a Jougard Ranch) approximately 1.4 miles south east of the ODA.

4.3 The Conda/Woodall Mountain Phosphate Mine produced phosphate ore under various operators from 1906 to 1984 and under Federal Phosphate lease I-04494 issued in 1954, and I-015523 issued in 1965. Mining initially occurred underground, transitioning into open pit mining in the early 1950’s. Simplot became the mine operator in 1960. During open pit mining, surface soils and rock (called “overburden”) were excavated from the mining pits to expose the phosphate ore. Overburden was either backfilled into the pits or placed in external overburden areas. Portions of these

overburden rock units contain naturally elevated levels of selenium and other trace metals. Handling and disposal of overburden accelerated both physical and chemical weathering processes, resulting in releases of selenium and other contaminants (metals) to the environment. Once these contaminants of potential concern (“COPCs”) are released through this oxidation and dissolution process, the COPCs may be transported by groundwater, surface water, sediments, or by direct plant uptake. Selenium has the widest distribution and greatest exceedances of risk-based benchmark concentrations in the area of the ODA and is, therefore, the contaminant of greatest potential impact and highest concern.

4.4 The ODA is one of several overburden disposal areas located along the eastern side of Woodall Mountain. A large amount of characterization data was collected from the ODA and down gradient area between 2001 and 2010, including samples of surface water, ground water, soils, sediment, vegetation, macro invertebrate, and fish tissue. The data collected through 2009 are the basis for determining the need for this removal action. This ODA has released high levels of contaminants to the surface water and shallow ground water, as well as elevating concentrations of selenium in surfaces soils, sediments and vegetation. The COPCs for the ODA include selenium, cadmium, chromium, zinc, and arsenic – all of which are hazardous substances or pollutants or contaminants as defined by Section 101(14) and 101(33) of CERCLA, as amended, 42 U.S.C. § 9601(14) and (33). Additionally, the ODA has very steep side slopes that are potentially unstable, and subject to further erosion and down slope movement. This could result in additional substantial releases to the environment.

4.5 A Preliminary Assessment was conducted for the Site in August 2008, by Ecology and Environment under contract to the EPA. The Remedial Investigation/Feasibility Study (“RI/FS”) for the Site is ongoing. The RI/FS will fully evaluate all of the characterization data, including information pertaining to contaminants other than selenium, to determine the nature and extent of contamination and any associated threat to public health, welfare, or the environment. The RI/FS will also evaluate alternatives for remedial actions to prevent, mitigate, or otherwise respond to releases of contaminants from the Site. IDEQ, EPA, and BLM will determine in a final Record of Decision whether additional clean up actions at the ODA are necessary to address surface water, ground water and/or vegetation on the basis of monitoring conducted after completion of the removal action, and information generated during the RI/FS.

4.6 Samples of soils on the ODA exceed risk-based human health and ecological screening level benchmarks for selenium. Once these COPCs are released through oxidation and leaching, those COPCs are transported by groundwater and surface water (through run-off and/or stream flow) or by direct plant uptake. Evidence of contaminant migration is observed in surface water samples which exceed water quality standards for selenium in Pedro Creek as far as 3.2 miles downstream of the ODA, and shallow groundwater which exceeds MCLs approximately 2200 feet down gradient (east) of the ODA. The selenium in the soils also has been taken up by vegetation at concentrations that exceed risk-based bench marks, particularly on the ODA and in the

vicinity of the NES-5 seep. While the magnitude of these exceedances support the need for an early action, it should be noted that the conservative benchmarks are intended for risk screening purposes only and the exposure assumptions used to develop screening benchmarks could overstate risk for receptors using the Pedro Creek area. When complete, the Site risk assessment will determine action levels of selenium and other COPCs in soils, sediments, and vegetation above which there is an unacceptable risk to receptors based on Site specific information and conditions.

4.7 Several instances of livestock mortality, which may have been attributed to selenium uptake occurred at the Conda Mine prior to 2004. The affected livestock were primarily sheep that grazed on Woodall Mountain and in the vicinity of the former Conda Townsite. One of the livestock mortality events was in close proximity to the ODA. In June 2001, between 160 and 180 sheep died while grazing on, and downslope of, ODA's at the head of Pedro Creek. Although less well documented than the sheep deaths, several horses which grazed near, and drank from, springs on the northeast side of Woodall Mountain (some specific locations unknown) during the early 1990's and in 2003 exhibited hoof soreness and/or sloughing which is symptomatic of acute selenium toxicity. Livestock grazing and watering on contaminated areas of the mine site is now restricted, both on Simplot-owned land and BLM- administered public lands.

4.8 Some plant species readily absorb selenium from soils and concentrate it in their tissues. Selenium toxicity in livestock occurs when animals graze on forage containing such seleniferous plants.

4.9 Chronic oral exposure to high levels of selenium results in a number of human health effects. Symptoms of selenosis include a garlic odor on the breath, deformation and loss of nails, gastrointestinal disorders, hair loss, fatigue, irritability, and neurological damage. Nearby residents, recreationists and/or trespassers could be exposed to elevated levels of selenium in soils on the ODA and to contaminated surface water and sediments down gradient of the ODA.

4.10 In addition to the contaminant migration through leaching and transport via groundwater and/or surface water, the steep eastern sides of the ODA are unstable and subject to landslides and other downslope movement. Some waste rock is currently observed beyond the toe of the ODA, resulting from minor gravity sliding and/or erosion and transport via run-off. The potential for a large scale slope failure exists due to the steep slopes which lack structural support due to the random manner in which the waste rock was placed. Any or all of these transport mechanisms: gravity slides, landslides, and erosion resulting from run-off have the potential to move ODA material onto adjacent private property. Some ODA rocks have been observed on private property in the typically dry upper channel of Pedro Creek.

4.11 Seasonal weather conditions facilitate the release and migration of contaminants further from the ODA in several ways. Snow melt infiltrates through the ODA resulting in leaching of selenium and other contaminants to shallow groundwater.

Shallow groundwater within the ODA flows to a seep and/or other discharge points in the Pedro Creek drainage down gradient from the ODA.

4.12 In general, a greater mass of selenium is released when there is an increased volume of water infiltrating the ODA and when there is a longer flow path through the ODA materials. In addition, increased run-on and run-off during wetter months causes greater erosion and transport of ODA material and associated contaminants from the surface of the pile. Some of the eroded waste rock enters Pedro Creek and becomes part of the sediment load. Consequently, the highest concentrations of contaminants in Pedro Creek are typically detected during late Spring when both infiltration into the ODA and run-off are highest. Furthermore, the potential for a significant slope failure is greatest during times of high precipitation and infiltration through the ODA.

4.13 Actual or threatened releases of hazardous substances from the ODA are present and imminent and substantial endangerment to public health, welfare, or the environment exists.

4.14 An Action Memorandum was signed on July 13, 2011 by EPA, IDEQ, and BLM. The Action Memo selected a removal alternative that includes:

- a. In-place consolidation and re-grading of the existing steep slopes of the ODA;
- b. Placement of a soil cover over re-graded areas consisting of 18 inches on the side slopes and 12 inches on the top and upslope areas;
- c. Cover materials will include approximately 142,000 cy of weathered Dinwoody soils which would be taken from an on-Site borrow area on Simplot-owned land, approximately 2 miles south of the ODA;
- d. Disturbed areas will be re-vegetated with non-selenium-accumulator plant species;
- e. Diversion ditches and other erosion and sedimentation controls will be installed to minimize run-on and manage run-off so that infiltration through the waste rock is reduced. A few thousand cubic yards of rock for erosion control would be borrowed from an On-Site Rex Chert outcrop within a mile of the ODA. Sampling would ensure that only non-seleniferous materials would be used to construct the cover and erosion control features;
- f. A Post-Removal Site Control Plan will be developed and implemented. Interim institutional controls (likely consisting of temporary fencing) may be implemented to control access and allow the new vegetation to establish without livestock grazing or disturbance.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

5.1 Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA, BLM, and IDEQ have determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site and at the ODA within the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and also pollutants, contaminants and/or hazardous and deleterious materials as defined in IDAPA 58.01.01.010.78, 58.01.01.010.44 and 58.01.01.010.19 and have or may cause environmental degradation, sickness, health hazards and/or nuisance conditions.

c. Simplot is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Simplot is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Simplot is the current and former “owner” and “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Simplot is further liable to the State under Idaho Code § 39-108(6) for all expenses incurred by Idaho in connection with investigating and terminating a nuisance or source of environmental degradation, sickness or health hazard.

e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement/CO is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement/CO, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. COLLATERAL USE OF SETTLEMENT AGREEMENT

6.1 Except as set forth in Paragraph 4, nothing in this Settlement Agreement shall constitute or be construed as an admission of liability or fact by any of the Parties. Specifically, Simplot does not admit the jurisdiction of, or any responsibility or liability to, or the findings of fact, conclusions of law, or determinations made by the EPA, BLM or IDEQ, or any other entity regarding or relating to the presence or sources of hazardous or deleterious substances or materials at the Site, or arising out of or relating to the Site or the matters described herein. Simplot does not acknowledge or concede that any release or threatened release of hazardous or deleterious substances or materials at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, including its agencies, and the IDEQ similarly do not admit any liability arising out of or relating to the Site. None of the provisions of this Settlement Agreement shall be admissible in evidence in any proceeding, other than in a proceeding to enforce this Settlement Agreement or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this Settlement Agreement with the NCP and CERCLA, and or the EPHA and HWMA, or in an action to recover response costs from any third party or parties. Nothing in this Settlement Agreement creates any rights or claims in any entity not a Party to this Settlement Agreement, with the exception of the right of the Tribes to recover costs under Section XVI.

VII. SETTLEMENT AGREEMENT/CO

7.1 Based upon the foregoing provisions of this Settlement Agreement and the Administrative Record for the removal action, it is hereby ordered and agreed that Simplot shall comply with all provisions of this Settlement Agreement/CO, including, but not limited to, all appendices to this Settlement Agreement/CO and all documents incorporated by reference into this Settlement Agreement/CO, and perform the actions required in this Settlement Agreement, including any modifications thereto.

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

8.1 All Work to be performed under this Settlement Agreement shall be under the direction and supervision of Simplot or its consultants with experience in CERCLA investigations and response actions. Simplot shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within fifteen (15) days prior to the commencement of Work. EPA and IDEQ retain the right to disapprove of any or all of the contractors and/or subcontractors retained by Simplot or Simplot's choice of itself to do the Work. If EPA and IDEQ disapprove of a selected contractor, or Simplot's choice of itself, Simplot shall retain a different contractor or notify that Simplot will perform the Work in place of the disapproved contractor, and shall notify EPA and IDEQ of that contractor's name and qualifications within thirty (30) days of EPA's and IDEQ's disapproval.

8.2 Simplot has designated Alan Prouty as its Project Coordinator for this removal action:

Alan L. Prouty
J.R. Simplot Company
P.O. Box 27, One Capital Center
999 Main Street, Ste 1300
Boise, Idaho 83707-0027
Phone: 208-389-7365
E-mail: alan.prouty@simplot.com

To the greatest extent possible, the Project Coordinator shall be present on Site at the ODA or readily available during the Work. Receipt by Respondent's Project Coordinator of any notice or communication relating to this Settlement Agreement/CO shall constitute receipt by Simplot.

8.3 The OSC and the IDEQ Project Manager shall be responsible for overseeing implementation of the Work and/or activities required at the Site and the ODA under this Settlement Agreement. All written communications between the Parties concerning implementation of the Settlement Agreement/CO shall be directed to the OSC or IDEQ Project Manager, by regular or overnight mail or by facsimile or other electronic means, with copies to such other persons as the Parties reasonably designate. The Parties may change their respective OSC/Project Coordinator/Project Manager and shall notify each other in writing at least five days prior to such change. Copies of written communications and Deliverables shall be sent simultaneously to EPA's On-Scene Coordinator ("OSC") and the Project Managers.

8.4 EPA has designated Fran Allans of the EPA Region 10's Idaho Operations Office as its OSC. IDEQ has designated Margaretha English as its Project Manager. BLM has designated Colleen O'Hara as its Project Manager. FWS has designated Sandi Fisher as its Project Manager. The Tribes have designated Kelly Wright as their Project Manager.

8.5 Except as otherwise provided in this Settlement Agreement/CO, Simplot shall direct all submissions required by this Settlement Agreement/CO to the OSC and Project Managers as set forth below. One electronic copy of Deliverables and one paper copy of Deliverables shall be sent by regular or overnight mail to the following persons:

Fran Allans
1435 N. Orchard St.
Boise, Idaho 83706
Phone: (208) 378-5775
Fax: (208) 378-5744
E-mail: allans.fran@epa.gov

Colleen O'Hara-Epperly
Environmental Protection Specialist
Bureau of Land Management
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204
Phone: (208)236-7577
Fax: (208) 478-6376
e-mail: cohara@blm.gov

Sandi Fisher
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, Idaho 83202
Phone: (208) 237-6975 Ext 102
Fax: (208) 237-8213
E-mail: Sandi_Fisher@fws.gov

Kelly Wright
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203
Phone: (208) 238-5372
Fax: (208) 237-0797
e-mail: kwright@shoshonebannocktribes.com

EPA Region 10 Superfund Records Center
Attn: Kimberlee McDonnell
1200 S. Sixth Ave., ECL-076
Seattle, WA 98103
Phone: 206-553-4494
Email: R10-SF Records

Two paper copies and one electronic copy of all submissions shall be sent to:

Margaretha English
Idaho Department of Environmental Quality
1410 N. Hilton
Boise Idaho, 83706
Phone: 208-373-0271
FAX: 208-373- 0154E-mail:
margaretha.english@deq.idaho.gov

One paper copy of all submissions shall also be sent to IDEQ's Regional Office:

Idaho Department of Environmental Quality
Attn: Doug Tanner
Pocatello Regional Office
444 Hospital Way, #300
Pocatello, ID 83201

8.6 The EPA designee above shall have the authority vested in an On Scene Coordinator and Remedial Project Manager pursuant to CERCLA and the NCP. IDEQ's Project Manager shall have the authority vested in the Project Manager by the EPHA, the HWMA, and other applicable law. Absence of the OSC and/or the Project Manager from the Site or the ODA shall not be cause for stoppage of Work unless specifically directed by the OSC or Project Manager.

IX. WORK TO BE PERFORMED

9.1 Simplot agrees to conduct activities and submit Deliverables as provided by the Action Memorandum and the Settlement Agreement and SOW. Work must be conducted in accordance with the standards, specifications, and other requirements of the Design Documents, Engineering Change Orders, as initially approved or modified, and as may be amended by EPA and IDEQ. All such Work shall be conducted in accordance with CERCLA, the NCP, and relevant EPA guidance.

9.2 The objective of the Work is to conduct a non time-critical removal action at the angle of repose overburden pile in the ODA that will include regrading the steeply sloped overburden pile and adding placement of a soil cover system to improve long-term stability and reduce releases of selenium, consistent with the Action Memorandum. The Work to be performed is described in the SOW, and approved Deliverables.

9.3 Approval of Plans and Other Submissions

a. All Deliverables shall be submitted initially by Simplot in draft form, in accordance with the schedule provided in the SOW, or as otherwise established by EPA and IDEQ, and are subject to review, comment, and written approval or disapproval. The IDEQ Project Manager agrees to consolidate any comments received from IDEQ, EPA, BLM, FWS, and the Tribes and provide a single set of comments to Simplot. Simplot shall provide a response to all comments, and submit the response and revised document to the IDEQ Project Manager in accordance with the schedule in the SOW.

b. EPA and IDEQ may approve, disapprove, require revisions to, or modify a draft Deliverable in whole or in part. If EPA and IDEQ require revisions, Simplot shall submit a revised draft Deliverable within thirty (30) days of receipt of EPA's notification of the required revisions that incorporates all comments and corrects

all deficiencies identified by EPA and IDEQ (unless such comments have been revised or withdrawn in writing) in accordance with the schedule in the SOW.

c. Simplot shall implement the Deliverable as approved or modified in writing by EPA and IDEQ in accordance with the schedule approved by EPA and IDEQ. Once approved, or approved with modifications, the approved Deliverable and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement/CO.

d. Simplot shall not commence any Work except in conformance with the terms of this Settlement Agreement/CO. Simplot shall not commence implementation of a Deliverable developed hereunder until receiving written EPA and IDEQ approval pursuant to Paragraph 9.3(b).

9.4 Conveyance of Property. Simplot shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement/CO and written notice to EPA and IDEQ of the proposed conveyance, including the name and address of the transferee. Simplot also agrees to require that its successors comply with the immediately preceding sentence and Sections X (Site Access) and XI (Access to Information).

X. SITE ACCESS

10.1 If the Site, or any other property where access is needed to implement this Settlement Agreement/CO, is owned or controlled by Simplot, Simplot shall, commencing on the Effective Date, provide EPA, IDEQ, BLM and their representatives, including contractors, and Support Agency personnel accompanied by IDEQ or EPA, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement Agreement/CO. Beginning on the Effective Date of this Settlement Agreement/CO, BLM shall permit access to the portions of the Site located on federally managed land to Simplot and its authorized representatives, as necessary to perform the Work required under this Settlement Agreement/CO.

10.2 Where any action under this Settlement Agreement/CO is to be performed in areas owned by or in possession of someone other than Simplot, Simplot shall use its best efforts to obtain such access as may be needed, if any, to private lands that are necessary to perform the Work required under this Settlement Agreement. Simplot shall use its best efforts to have any access agreement that it obtains include such access by EPA, IDEQ, and BLM as may be necessary for EPA IDEQ, BLM and their authorized representatives, and Support Agency personnel accompanied by IDEQ, EPA, or BLM to implement the terms of this Settlement Agreement, and shall specify that Simplot is not the representative of EPA, IDEQ, or BLM for purposes of liability associated with Site activities. Simplot shall provide EPA, IDEQ, and BLM with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement.

10.3 To the extent that Simplot is unable to obtain consensual access to any private lands, the United States and/or IDEQ may exercise their authorities to obtain access. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money. If Simplot is unable to obtain access, Simplot shall describe in writing its efforts to obtain access. EPA may then assist Simplot in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Simplot shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of EPA, DOI, and Tribe Response Costs).

10.4 Notwithstanding any provision of this Settlement Agreement/CO, EPA, IDEQ, and BLM retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations. Nothing in this agreement affects these authorities.

XI. ACCESS TO INFORMATION

11.1 Simplot shall provide to EPA and IDEQ upon request, and in accordance with this Section, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement/CO, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

11.2 Simplot may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and IDEQ under this Settlement Agreement/CO to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), and the Idaho Public Records Act, Idaho Code § 9-337 *et seq.* Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. Documents submitted to IDEQ under claim of confidentiality will be afforded the protections specified in Idaho Code § 9-340D. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, IDEQ, and BLM, the public may be given access to such documents or information without further notice to Simplot.

11.3 Simplot may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal and state law. If Simplot asserts such a privilege in lieu of providing documents, it shall provide EPA, IDEQ, and BLM with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Simplot. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement/CO shall be withheld on the grounds that they are privileged. In the event EPA and IDEQ disagree with Simplot’s claim of privilege, Simplot shall promptly

disclose the document or information previously withheld, unless Simplot disputes the determination by involving the Dispute Resolution provisions of XVIII of this Settlement Agreement.

11.4 No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site. All Parties waive any objection to the validity and admissibility of data generated in the course of performance of Work under this Settlement Agreement, if such data have been collected or generated in compliance with this Settlement Agreement/CO, and validated in accordance with the QA/QC procedures set forth in the SAP. No Party waives its right to object to the relevance of the interpretation of, or the conclusions to be drawn from, such validated data.

XII. RECORD RETENTION

12.1 During the performance of the Work and until ten (10) years after Simplot's receipt of EPA and IDEQ's notification pursuant to Section XXXI (Notice of Completion of Work), Simplot shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary, unless EPA and IDEQ notify Simplot in writing that these documents may be destroyed earlier. Until ten (10) years after Simplot's receipt of EPA and IDEQ's notification pursuant to Section XXXI (Notice of Completion of Work), Simplot shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

12.2 At the conclusion of this document retention period, Simplot shall notify EPA and IDEQ at least sixty days prior to the destruction of any such records or documents, and provide EPA and IDEQ the opportunity to take possession of or copy non-privileged material.

XIII. COMPLIANCE WITH OTHER LAWS

13.1 All actions required to be taken pursuant to this Settlement Agreement/CO shall be performed in accordance with all applicable local, state, and federal laws and regulations as set forth in Section 121 of CERCLA, 42 U.S.C. § 6921, and 40 C.F.R. § 300.415(j) except that, as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e), no federal, state, or local permit shall be required for the portion of the Work conducted entirely on-site, where such Work is carried out in compliance with Section 121 of CERCLA and the NCP. Compliance by Simplot with the terms of this Settlement Agreement/CO shall not relieve Simplot of its obligation to comply with CERCLA, RCRA, EPHA, HWMA or any other applicable local, state or federal laws and regulations.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

14.1 In the event of any incident or change in conditions during performance of the Work that causes or threatens a release of Waste Material from the Site that causes or threatens to cause an immediate threat to public health or welfare or the environment, Simplot shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release. Simplot shall take these actions in accordance with all applicable provisions of this Settlement Agreement/CO, including, but not limited to, the Health and Safety Plan and immediately notify the OSC, the IDEQ Project Manager, and the Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263 and the National Response Center at (800) 424-8802. Simplot must comply with the reporting requirements under Section 103(c) of CERCLA, § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11004 *et seq.*, and provide copies of any reporting, and/or notice of such reporting to the RPM and IDEQ Project Manager. In the event that Simplot fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Simplot shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of EPA, DOI, and Tribe Response Costs).

XV. AUTHORITY OF ON-SCENE COORDINATOR

15.1 The OSC and the IDEQ Project Manager shall be responsible for overseeing Simplot's implementation of this Settlement Agreement/CO. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement/CO. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XVI. PAYMENT OF EPA, DOI, AND TRIBES RESPONSE COSTS

16.1 Payments for EPA Future Response Costs.

a. Simplot shall reimburse EPA for all Future Response Costs associated with this Settlement Agreement/CO that are not inconsistent with the NCP. On a periodic basis EPA will send Simplot a bill requiring payment that includes a cost summary. Simplot shall make all payments within thirty (30) days of receipt of each bill requiring payment. Simplot shall make all payments required by this Paragraph in the manner required by Subparagraph 16.1.b, with notice as required by Subparagraph 16.1.c. The total amount paid will be deposited by EPA in the SE Idaho Selenium Conda/Woodall Site Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to conduct or finance Future Response Costs. Any amounts remaining in the SE Idaho Selenium Conda/Woodall Site Response Costs Special Account may be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Simplot shall make all payments required by this Paragraph to EPA by

Fedwire Electronic Funds Transfer (“EFT”) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

and shall reference Site/Spill ID Number SSID 10KT and the EPA docket number for this action. Simplot may also pay by ACH payment in which case, payment by Simplot shall be made to EPA by Automated Clearinghouse (“ACH”) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number SSID 10KT and the EPA docket number for this action. Payment may also be made by official bank check made payable to “EPA Hazardous Substance Superfund.” Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number SSID 10KT, and the EPA docket number for this action, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

c. At the time of payment, Simplot shall send notice that payment has been made to Fran Allans, 1435 N. Orchard St., Boise, Idaho 83706 and to the EPA Cincinnati Finance Office by email to acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number and EPA docket number for this action.

d. The total amount to be paid by Simplot pursuant to Paragraph 16.1 shall be deposited by EPA in the Conda/Woodall Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

16.2 Payment of DOI Future Response Costs

a. Subject to the limitation in paragraph 16.2(d), Simplot shall reimburse DOI for all Future Response Costs associated with this Settlement Agreement/CO that are not inconsistent with the NCP. On a periodic basis DOI will send Simplot a bill requiring payment that includes a cost summary. Simplot shall make all payments within thirty (30) days of Simplot's receipt of each bill requiring payment. Simplot shall make all payments required by this Paragraph in the manner required by Subparagraph 16.2.b and 16.2.c.

b. Payments to DOI shall be made by electronic funds transfer through the Department of Treasury's Automated Clearing House/Remittance Express Program. Payments should include the following information:

Receiver Name:	DOI Central Hazardous Materials Fund ALC 1401001
Receiver Tax ID Number:	53-0196949
Receiver Address:	7401 West Mansfield Avenue Mailstop D-2770 Lakewood, CO 80235
Receiver Bank:	Federal Reserve Bank New York, NY ABA #051036706
Receiver ACH Account No.:	312024

c. Each payment shall reference: Site Name: Southeast Idaho Phosphate Mining – Conda/Woodall Mountain Phosphate Mine Site/Pedro Creek ODA Settlement Agreement/CO. In addition, DOI requests that at the time of payment, Simplot send notification of payment referencing the amount of payment and the Site name to the DOI contacts identified in Paragraph 8.5 and to the following individual:

United States Department of the Interior
Central Hazardous Materials Fund

Attn: Fund Manager
1849 C Street, N.W.
Mail Stop 2342
Washington, DC 20240

d. The total amount to be paid to DOI shall not exceed \$45,000 for the first year following the Effective Date, \$35,000 for the second year, and shall not exceed \$25,000 for each year thereafter.

16.3 Cost Disputes. Disputes regarding EPA's or DOI's Future Response Costs will be resolved using the dispute resolution procedures described in Section XVIII (Dispute Resolution) of this Settlement Agreement/CO. Any objection by Simplot shall be made in writing within thirty (30) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute.

a. Disputed costs shall be paid by Simplot into an interest-bearing escrow account while the dispute is pending.

b. Simplot shall send to EPA's OSC, DOI's Project Manager, and EPA's Cincinnati Finance Center at the addresses provided in Paragraphs 16.1.b, 8.5, and 16.1.c, respectively, a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

c. All undisputed costs shall be remitted by Simplot in accordance with the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, Simplot shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, the inclusion of costs for work outside the scope of this Settlement Agreement/CO, or the inclusion of costs that have not been paid, or approved for payment, by EPA or DOI. If EPA or DOI prevails in the dispute resolution proceeding, Simplot shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination. If Simplot prevails concerning any aspect of the contested costs, Simplot shall pay that portion of the costs for which it did not prevail in the manner described in the preceding sentence. Simplot shall be disbursed any balance of the escrow account.

16.4 Interest. In the event that the payments for EPA's and DOI's Future Response Costs are not made within thirty (30) days of Simplot's receipt of a bill, Simplot shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the billing statement and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Simplot's failure to make timely payments under this Section, including but not limited to, the payment of stipulated penalties pursuant to Section XX.

16.5 Payment of Tribes' Response Costs

a. Simplot shall reimburse the Tribes for all Future Response Costs associated with this Settlement Agreement/CO that are not inconsistent with the NCP, subject to the limitation set forth in Paragraph 16.6. On a periodic basis the Tribes will send Simplot a bill requiring payment that includes a cost summary. Simplot shall make all payments within thirty (30) days of Simplot's receipt of each bill requiring payment. Simplot shall make all payments required by this Paragraph in the manner required by Subparagraph 16.5.b and 16.5.c.

b. Payments to the Tribes shall be made by certified or cashier's check made payable to the Shoshone-Bannock Tribes and mailed to:

Environmental Waste Management Program
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203

Each check shall reference: Site Name: Southeast Idaho Phosphate Mining – Conda/Woodall Mine Site Pedro Creek ODA Settlement Agreement/CO.

c. Simplot may dispute payment of any portion of the Tribes' Future Response Costs, but only on the basis of accounting errors or if they believe that such costs were excess costs incurred as a direct result of an action that was inconsistent with the NCP. Disputes regarding the Tribes' Response Costs will be resolved using the dispute resolution procedures described in Section XVIII of this Settlement Agreement. EPA will be the reviewing agency for disputes involving reimbursement of the Tribes' response costs. Any objection by Simplot regarding payment of the Tribes' response costs shall be made in writing to EPA within thirty (30) days of receipt of the billing statement from the Tribes and shall specifically identify the disputed costs and the basis of the dispute. Disputed Tribal costs shall be paid by Simplot into an interest-bearing escrow account while the dispute is pending. Simplot shall send to the OSC and the Tribes' Project Manager a copy of the transmittal letter, a copy of the check paying the uncontested portion of Tribal Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. All undisputed Tribal costs shall be remitted by Simplot in accordance with the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, Simplot shall bear the burden of establishing an accounting error or the inclusion of costs inconsistent with the NCP. If EPA prevails in the dispute resolution proceeding regarding the Tribal costs, Simplot shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final EPA determination. If Simplot prevails concerning any aspect of the contested costs, Simplot shall pay that portion of the costs for which they did not prevail in the manner described in the preceding sentence. Simplot shall be disbursed any balance of the escrow account.

16.6 Limitation on Future Response Costs. The total amount to be paid to the Tribes by Simplot under this Settlement Agreement shall not exceed \$10,000 per year for the Tribes.

XVII. PAYMENT OF IDEQ RESPONSE COSTS

17.1 Payment of IDEQ Response Costs

DEQ Response Costs with respect to the Site will be reimbursed in the following manner:

- a. Within fifteen (15) days of the effective date of this Settlement Agreement/CO, IDEQ shall provide Simplot with an accounting invoice reflecting all IDEQ Response Costs incurred through the effective date of the Settlement Agreement/CO.
- b. Within forty five days of receipt of the accounting invoice referenced in Paragraph 17.1.a. , Simplot shall reimburse all IDEQ Response Costs reflected in the accounting invoice unless otherwise subject to dispute resolution pursuant to of this CO/AOC.
- c. Within thirty (30) days of the effective date of this CO/AOC, as an initial deposit, Simplot will further pay the sum of Twenty Thousand Dollars (\$20,000.00) to be deposited to an account established for this Site and utilized to cover IDEQ's future Response Costs.
- d. Thereafter, IDEQ shall provide a quarterly accounting and invoice to Simplot of IDEQ Response Costs incurred by IDEQ in relation to this Settlement Agreement/CO. Within forty five days of Simplot's receipt of IDEQ's quarterly accounting invoice, Simplot shall reimburse the State for all IDEQ Response Costs reflected in the accounting invoice.
- e. The initial deposit will be returned to Simplot within sixty (60) days of the date IDEQ receives payment of its final IDEQ Response Costs. All payments to IDEQ shall be made to:

Administrative Services-Accounts Receivable
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

17.2 Simplot may dispute payment of any portion of IDEQ's submitted costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this Settlement Agreement/CO, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using the dispute resolution

procedures described in Section XVIII. Any objection by Simplot shall be made in writing within thirty (30) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Simplot in accordance with the provisions in the preceding paragraphs of this Section. In any dispute resolution proceeding, Simplot shall bear the burden of establishing their contentions as to inappropriate costs. If IDEQ prevails in the dispute resolution proceeding, Simplot shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination.

XVIII. DISPUTE RESOLUTION

18.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this Settlement Agreement/CO. A dispute shall be considered to have arisen when Simplot serves the IDEQ Project Manager with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight mail, email, or some equivalent service. The IDEQ Project Manager will forward the Notice of Dispute to EPA and BLM. The EPA, IDEQ, and BLM will determine which agency shall be the reviewing agency for purposes of the particular dispute. The IDEQ Project Manager will notify Simplot which agency shall be the reviewing agency within ten (10) days of receipt of the Notice of Dispute.

18.2 In the first instance, the disputing parties shall attempt to resolve any dispute arising under this Settlement Agreement/CO by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless the reviewing agency and Simplot agree in writing to modify the period for informal negotiations. If the disputing parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following Paragraphs shall apply.

18.3 In the event the disputing parties cannot resolve the dispute through informal negotiations, then the position of the reviewing agency shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, Simplot invokes the formal dispute resolution procedures of this Section by serving on the reviewing agency a written Statement of Position on the matter in dispute. Simplot's written Statement of Position shall be sent by facsimile, overnight mail, email, or some equivalent service, and shall define the dispute and state the basis of Simplot's objections to the position of the reviewing agency.

18.4 Following receipt of Simplot's Statement of Position, the reviewing agency shall promptly provide the appropriate supervisory office with a copy of Simplot's statement of position and, within a reasonable timeframe, a written response to that Statement. The reviewing agency shall simultaneously send its response to Simplot by facsimile, overnight mail, email or some equivalent service.

18.5 Following receipt of Simplot's statement of position and the agency response, the appropriate supervisory office of the reviewing agency shall make a final determination resolving the matter in dispute. The appropriate supervisory office for

IDEQ is the Director of the Department of Environmental Quality. The appropriate supervisory office for EPA is the Director of the Environmental Cleanup Office. The appropriate supervisory office for BLM is the Idaho State Director. The appropriate supervisory office for FWS (disputes over FWS costs) is the Field Supervisor, Eastern Idaho Field Office.

18.6 Any decision made by IDEQ pursuant to this Section shall not constitute a final agency action subject to judicial review unless and until IDEQ commences a judicial action to enforce this Settlement Agreement/CO, in which case any challenge to a final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273. Any determination by the United States pursuant to this Section is governed by Section 113(h) and (j) of CERCLA 42 U.S.C. § 9613(h) and (j), and shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this Settlement Agreement/CO, in which case the determination shall only be reviewable in Federal court.

18.6 Nothing in this Settlement Agreement/CO precludes the Parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in Paragraph 18.1 - 18.5.

18.7 Upon completion of all dispute resolution procedures under this Section, Simplot shall proceed in accordance with the final determination regarding the matter in dispute. If Simplot does not perform any required Work in accordance with the final determination, IDEQ or EPA may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this Settlement Agreement/CO pursuant to applicable law.

18.8 The invocation of the dispute resolution provisions of this Settlement Agreement/CO shall not extend, postpone or affect in any way any unrelated obligation of Simplot under this Settlement Agreement/CO not directly in dispute, unless the Parties agree in writing otherwise. Stipulated penalties with respect to any disputed matter shall continue to accrue, but payment will be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Settlement Agreement/CO. In the event Simplot does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XX, unless otherwise agreed by the Parties in writing.

XIX. FORCE MAJEURE

19.1 Delays or inability to perform any of the requirements of the Settlement Agreement within the time limits prescribed shall not be a violation of the Settlement Agreement where performance is prevented or delayed by a *force majeure event*. For purposes of this Settlement Agreement/CO, a *force majeure event* is defined as any event arising from causes beyond the control of Simplot, or of Simplot's contractors, that delays or prevents performance of any obligation under this Settlement Agreement/CO despite Simplot's best efforts to fulfill the obligation. *Force majeure* does not include

financial inability to complete performance of the obligation, or increased cost of performance.

19.2 If any event occurs or has occurred that may materially delay the performance of any obligation under this Settlement Agreement/CO or submittal of any Deliverable past the applicable deadline, Simplot shall notify EPA and IDEQ orally within 24 hours of the time Simplot knew or should have known that the event would delay such performance or submittal. Within five (5) Working Days thereafter, Simplot shall notify EPA and IDEQ in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Simplot shall include with any notice all available documentation supporting its claim that the delay was attributable to force majeure. Failure to comply with these requirements shall waive any claim of force majeure by Simplot.

19.3 The Project Manager shall notify Simplot in writing of the determination by EPA and IDEQ as to whether force majeure applies to the event or circumstances within seven days after receipt of written notice from Simplot, or upon notice, such additional time as EPA and IDEQ reasonably need to respond. If EPA and IDEQ agree that the delay has been or will be caused by circumstances constituting a *force majeure event*, the due date for each incomplete task in this Settlement Agreement shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the force majeure circumstance. If the EPA and IDEQ disagree with Simplot's force majeure claim, or if there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XVIII of this Settlement Agreement.

XX. STIPULATED PENALTIES

20.1 Unless there has been a written modification of a compliance date or other requirement of this Settlement Agreement/CO by the EPA and IDEQ, or a *force majeure* event as defined herein, in the event Simplot fails to meet any requirement of this Settlement Agreement/CO, Simplot shall pay stipulated penalties in the amount of \$1,000 per day, per violation for the 1st through 14th days of noncompliance; \$3,000 per day, per violation for the 15th through 30th day of noncompliance; and \$7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by Simplot shall include complete and timely performance of each activity required under this Settlement Agreement/CO including, but not limited to, reimbursement of response costs pursuant to Sections XVI and XVII, or complete and timely performance of all Work or any activities described in any plan, statement or Deliverable approved under this Settlement Agreement/CO.

20.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section IX

(Work to be Performed), during the period, if any, beginning on the 31st day after IDEQ and EPA's receipt of such submission until the date that the IDEQ Project Manager notifies Simplot of any deficiency; and 2) with respect to a matter subject to Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the reviewing agency management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement/CO.

20.3 Following EPA and IDEQ's determination that Simplot has failed to comply with a requirement of this Settlement Agreement/CO, IDEQ's Project Manager will advise Simplot in writing of any stipulated penalties owed by Simplot pursuant to this Section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless Simplot has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by IDEQ's Project Manager.

20.4 The payment of penalties shall not alter in any way Simplot's obligation to complete performance of the Work required under this Settlement Agreement/CO.

20.5 Nothing in this Settlement Agreement/CO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Simplot's violation of this Settlement Agreement/CO or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement/CO or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXII, Paragraph 22.3. Notwithstanding any other provision of this Section, EPA and IDEQ may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement/CO.

XXI. COVENANT NOT TO SUE BY UNITED STATES AND IDEQ

21.1 In consideration of the actions that will be performed and the payments that will be made by Simplot under the terms of this Settlement Agreement/CO, and except as otherwise specifically provided in this Settlement Agreement/CO, the United States covenants not to sue or to take administrative action against Simplot pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Simplot of all obligations under this Settlement Agreement/CO,

including, but not limited to, payment of Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Simplot and does not extend to any other person.

21.2 In consideration of the actions that will be performed and the payments that will be made by Simplot under the terms of this Settlement Agreement/CO, and except as otherwise specifically provided in this Settlement Agreement/CO, IDEQ covenants not to sue or to take administrative action against Simplot pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Simplot of all obligations under this Settlement Agreement/CO, including, but not limited to, payment of Future Response Costs pursuant to Section XVI. This covenant not to sue extends only to Simplot and does not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES AND IDEQ

22.1 Except as specifically provided in this Settlement Agreement/CO, nothing herein shall limit the power and authority of the United States or IDEQ to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the United States or IDEQ from seeking legal or equitable relief to enforce the terms of this Settlement Agreement/CO, from taking other legal or equitable action as they deem appropriate and necessary, or from requiring Simplot in the future to perform additional activities pursuant to CERCLA or any other applicable law. This Settlement Agreement shall not operate pursuant to Idaho Code § 39-108(3)(a)(v) as related to any matters other than those addressed in the Work.

22.2 The covenant not to sue set forth in Section XXI above does not pertain to any matters other than those expressly identified therein. The United States and IDEQ reserve, and this Settlement Agreement/CO is without prejudice to, all rights against Simplot with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Simplot to meet a requirement of this Settlement Agreement/CO;
- b. liability for costs not included within the definitions of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

22.3 Work Takeover. In the event EPA and IDEQ determine that Simplot has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in their performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA and/or IDEQ may assume the performance of all or any portion of the Work as EPA and IDEQ determine necessary. Simplot may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA and IDEQ's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States or IDEQ in performing the Work pursuant to this Paragraph not inconsistent with the NCP shall be considered Future Response Costs that Simplot shall pay pursuant to Section XVI (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement/CO, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE BY SIMPLOT

23.1 Except as expressly provided in this Settlement Agreement, Simplot reserves all rights, claims and defenses it may have, including the right to bring an action against the United States or the State of Idaho under CERCLA, or other applicable law, for recovery of any response costs incurred in connection with the Site. Simplot also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' and or the State of Idaho's reservation of rights.

23.2 Simplot hereby covenants not to sue and agrees not to assert any claims or causes of action against the EPA and IDEQ or their contractors or employees, with respect to the Work and Future Response Costs or this Settlement Agreement/CO including, but not limited to:

23.2.1 any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

23.2.2 any claim arising out of the Work or Future Response Costs that have or will be incurred, including any claim under the United States Constitution, the State of Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

23.2.3. any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work and Future Response Costs.

23.3 These covenants not to sue shall not apply in the event the United States or IDEQ brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 22.2(b), (c), and (e) - (g), but only to the extent that Simplot's claims arise from the same response action, response costs, or damages that the United States or IDEQ is seeking pursuant to the applicable reservation.

23.4 This Settlement Agreement/CO requires the performance of an interim action but does not itself require implementation of a complete remedy. As such this Settlement Agreement/CO does not constitute a final remedy for contamination or pollution, if any, resulting from the matters addressed herein. IDEQ, EPA, and BLM expressly reserve the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this Settlement Agreement/CO shall not operate pursuant to Idaho Code 39-108(3)(a)(v) or Idaho Code § 39-4413(1)(d) to preclude the IDEQ from seeking additional relief.

23.5 Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. OTHER CLAIMS

24.1 By issuance of this Settlement Agreement/CO, the United States and IDEQ assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Simplot. No Party shall be deemed a party to any contract entered into by any other Party or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement/CO.

24.2 Except as expressly provided in Section XXI (Covenant Not to Sue by the United States and IDEQ), nothing in this Settlement Agreement/CO constitutes a satisfaction of or release from any claim or cause of action against Simplot or any person not a party to this Settlement Agreement/CO, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

24.3 No action or decision by EPA, BLM, or IDEQ pursuant to this Settlement Agreement/CO shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. CONTRIBUTION PROTECTION AND CLAIMS AGAINST THIRD PARTIES

25.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Simplot is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Simplot has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

25.2 Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXIII (Reservation of Rights and Covenant Not to Sue by Simplot), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXVI. INDEMNIFICATION

26.1 Simplot shall indemnify, save and hold harmless the United States and IDEQ, their officials, agents, and employees from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Simplot, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement/CO. Further, Simplot agrees to pay the United States and IDEQ all costs incurred by the United States and IDEQ, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States and/or the State based on negligent or other wrongful acts or omissions of Simplot, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement/CO. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Simplot in carrying out activities pursuant to this Settlement Agreement/CO. Neither Simplot nor any such contractor shall be considered an agent of the United States or the State.

26.2 The United States and the State shall give Simplot notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Section and shall consult with Simplot prior to settling such claim.

26.3 Simplot waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Simplot and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Simplot shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Simplot and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

27.1 At least seven (7) days prior to commencing any on-Site work under this Settlement Agreement/CO, Simplot shall secure, and shall maintain for the duration of this Settlement Agreement/CO, comprehensive general liability insurance and automobile insurance with limits of \$1.0 million dollars, combined single limit. Within the same time period, Simplot shall provide EPA and IDEQ with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement/CO, Simplot shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement/CO. If Simplot demonstrates by evidence satisfactory to EPA and IDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then with respect to that contractor or subcontractor, Simplot need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVIII. FINANCIAL ASSURANCE

28.1 Within thirty (30) days of the Effective Date, Simplot shall establish and maintain financial security in the amount of \$6.9 million in one or more of the following forms:

- a. A surety bond guaranteeing payment for performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Simplot; or

e. A demonstration that Simplot satisfies the requirements of 40 CFR 264.143(f).

28.2 If Simplot seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 28.1(d) of this Section, Simplot shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Simplot seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to the preceding paragraph, it shall resubmit sworn statements conveying the information required by 40 CFR 264.143(F) annually on the anniversary of the Effective Date. In the event that EPA and IDEQ determine at any time that the financial assurances provided pursuant to this Section are inadequate, Simplot shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA and IDEQ for approval one of the other forms of financial assurance listed in Paragraph 28.1 of this Section. Simplot's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement/CO.

28.3 If, after the Effective Date, Simplot can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 28.1 of this Section, Simplot may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Simplot shall submit a proposal for such reduction to EPA and IDEQ, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA and IDEQ. In the event of a dispute, Simplot may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

28.4 Simplot may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA and IDEQ, provided that the new form of assurance meets the requirements of this Section.

XXIX. MODIFICATIONS

29.1 The EPA and IDEQ may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA and IDEQ promptly, but shall have as its effective date the date of the OSC's or the IDEQ Project Manager's oral direction. Any other requirements of this Settlement Agreement/CO may be modified in writing by mutual agreement of the Parties.

29.2 If Simplot seeks permission to deviate from any approved work plan or schedule or Statement of Work, Simplot's Project Coordinator shall submit a written request to EPA and IDEQ for approval outlining the proposed modification and its basis.

Simplot may not proceed with the requested deviation until receiving oral or written approval from EPA and IDEQ.

XXX. ADDITIONAL REMOVAL ACTION

30.1 If EPA and IDEQ determine that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, IDEQ's Project Manager will notify Simplot of that determination. Unless otherwise stated by EPA and IDEQ, within thirty (30) days of receipt of notice from EPA and IDEQ that additional removal actions are necessary to protect public health, welfare, or the environment, Simplot shall submit for approval by EPA and IDEQ a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section IX (Work to Be Performed) of this Settlement Agreement/CO. Upon EPA and IDEQ's approval of the plan pursuant to Section IX, Simplot shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC and the IDEQ Project Manager's authority to make oral modifications to any plan or schedule pursuant to Section XXIX (Modifications).

XXXI. NOTICE OF COMPLETION OF WORK

31. 1 Upon completion of all requirements under this Settlement Agreement, other than continuing obligations, Simplot shall certify in writing to the EPA and IDEQ that all requirements under this Settlement Agreement, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of Simplot with requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If EPA and IDEQ agree with Simplot's certification and Simplot has paid all response costs due, will so notify Simplot in writing, and this Settlement Agreement, with the exception of any continuing obligations, shall be terminated. For purposes of this Section, continuing obligations shall include, but not be limited to, the following obligations contained in this Settlement Agreement: Section 4.0 of the SOW (Post Removal Site control Plan), Section XII(Record Preservation),)Paragraphs 23.2, 23.3, 23.4, and 23.5 (Simplot's Covenant Not to Sue), Section XXVI(Indemnification). If EPA and IDEQ determine that any such Work has not been completed, EPA and IDEQ's Project Manager will notify Simplot, and provide a list of the deficiencies. Simplot shall correct such deficiencies in accordance with the notice of EPA and IDEQ. Failure by Simplot to correct such deficiencies shall be a violation of this Settlement Agreement/CO, subject to the provisions of Section XVIII (Dispute Resolution).

XXXII. INTEGRATION/APPENDICES

32.2 This Settlement Agreement/CO and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement/CO. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other

than those expressly contained in this Settlement Agreement/CO. The following appendices are attached to and incorporated into this Settlement Agreement/CO:

Appendix 1 Statement of Work
Appendix 2 Action Memorandum
Appendix 3 Site Map

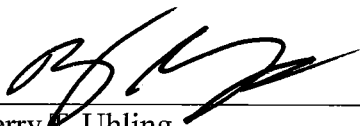
XXXIII. EFFECTIVE DATE

33.1 This Settlement Agreement/CO shall be effective on the date it has been signed by all Parties and concurred with by the United States Attorney General or his/her designee.

The undersigned representative of Simplot certifies that it is fully authorized to enter into the terms and conditions of this SETTLEMENT AGREEMENT and to bind the party it represents to this document.

Agreed this 10th day of September, 2012 .

For Simplot:



Terry F. Uhling

Title: Sr Vice-President and General Counsel

Conda/Woodall Mountain Phosphate Mine Site
Administrative Settlement Agreement and Order on Consent
for Removal Action

United States Environmental Protection Agency
Region 10

By: Cami Grandinetti

Cami Grandinetti

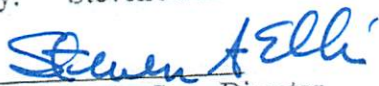
Title: Program Manager
Remedial Cleanup Program

Date: 9/13/12

Conda/Woodall Mountain Phosphate Mine Site
Administrative Settlement Agreement and Order on Consent
for Removal Action

United States Department of the Interior
Bureau of Land Management

By: Steven A. Ellis


Title: Idaho State Director

Date: 10/4/2012

Conda/Woodall Mountain Phosphate Mine Site
Administrative Settlement Agreement and Order on Consent
for Removal Action

United States Department of the Interior
Office of the Solicitor

By: Laura B. Brown


Title: Associate Solicitor
Division of Land and Water Resources

Date: 10-11-12

Conda/Woodall Mountain Phosphate Mine Site
Administrative Settlement Agreement and Order on Consent
for Removal Action

Idaho Department of Environmental Quality

By: Curt Fransen



Title: Director
Department of Environmental Quality

Date: 9/21/12



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 305-0439
Facsimile (202) 616-6583

October 4, 2012

Casey S. Padgett, Assistant Solicitor
U.S. Department of the Interior, Office of the Solicitor
Environmental Compliance and Response Branch
1849 C Street, NW
Washington, D.C. 20240

Re: Request for concurrence in Administrative Settlement Agreement and Order on Consent for performance of a removal action at Conda/Woodall Phosphate Mine in Southeastern Idaho and reimbursement of certain costs incurred in connection therewith

Dear Mr. Linden:

This is to advise you that pursuant to section 4(b)(1) of Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 28, 1996), the United States Department of Justice, Environment & Natural Resources Division, concurs in the referenced Administrative Settlement Agreement and Order on Consent with J.R. Simplot Company regarding the performance of a removal action at the Conda/Woodall Phosphate Mine located outside Soda Springs, Idaho, and the recovery of certain costs incurred in connection therewith.

Sincerely,

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement
Section

cc: Melissa Papasavvas, Esq. (DOI/Office of Solicitor/D.C.)
Nathalie Doherty, Esq. (DOI/Office of Solicitor/Portland)
Elizabeth McKenna, Esq. (EPA/Office of Regional Counsel/R10)
Frederick Phillips, Esq. (USDOJ-EES)

August 15, 2012

**STATEMENT OF WORK FOR
THE NON TIME-CRITICAL REMOVAL ACTIONS
AT THE PEDRO CREEK OVERBURDEN DISPOSAL AREA
OF THE CONDA-WOODALL MOUNTAIN MINE SITE
CARIBOU COUNTY, IDAHO**

1.0 PURPOSE

This Statement of Work (SOW) provides an overview of the Work that the Respondent will carry out pursuant to the Settlement Agreement /Consent Order (Settlement Agreement/CO) for the Non Time-Critical Removal Action (NTCRA) at the angle of repose overburden pile in the Pedro Creek Overburden Disposal Area (ODA) within the Conda/Woodall Mine Site (Site). The objective of the NTCRA is to regrade the steeply-sloped overburden pile and add placement of a Dinwoody Formation soil cover system on the pile. The NTCRA designed will improve longterm stability of the pile and reduce releases of selenium. The NTCRA is consistent with the action selected by the State of Idaho Department of Environmental Quality (IDEQ), the US Environmental Protection Agency (EPA) and the US Department of the Interior Bureau of Land Management (BLM) in the Action Memorandum (IDEQ/EPA/BLM, 2011).

The description of technical work herein is intended to provide information to the Respondent for the purpose of implementing the Settlement Agreement/CO and is not intended to change the meaning of any Settlement Agreement/CO language. This SOW is consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP 2003), The Settlement Agreement/CO and this SOW are hereafter referred to interchangeably as the "Settlement Agreement/CO." Any discrepancies between the Settlement Agreement/CO and the SOW are unintended, and whenever necessary the Settlement Agreement/CO will govern any interpretive disputes.

2.0 DESCRIPTION OF THE REMOVAL ACTION

The NTCRA shall include the following elements:

2.1 Site Preparation

Preparation activities in the NTCRA and borrow areas shall include, but are not limited to, clearing and grubbing, and construction of access roads as necessary. In addition, preparation activities in the NTCRA area may include stabilization of foundation in the new toe area, as necessary. Stormwater controls will be added or modified prior to regrading the overburden pile or placing any fill. Some of the surficial materials currently in the new toe area (e.g. eroded overburden, top soil, weathered Dinwoody Formation and soft, clayey material) may not be acceptable as foundation materials. The existing materials that are unacceptable as foundation materials in the new toe area shall be excavated and/or modified to provide a stable foundation prior to placing any regraded fill. Shallow groundwater in the toe area, especially any which surfaces in the form of seeps, will be managed as necessary to ensure stability of the regraded overburden pile.

2.2 Grading and Re-Shaping

The existing steep slopes of the overburden pile shall be regraded to achieve stable side slopes of 3H:1V, with designed grade breaks. Fill materials within the regraded areas shall receive an appropriate level of compaction to reduce infiltration and settlement. The slope stability shall have a factor of safety of at least 1.5 for static conditions and a factor of safety of at least 1.1 for seismic conditions. The regraded pile shall be capable of withstanding a seismic event having a 10 percent probability of occurring within 50 years (i.e., equivalent to a 500-year event). The flatter areas on top of the pile and the upslope areas to the west of the pile shall be regraded to provide positive drainage. Stormwater shall be drained to runoff collection ditches along the interior and perimeter of the regraded overburden pile, to reduce erosion and infiltration.

The toe of the overburden pile shall be relocated to the east within the property owned by the Respondent or the United States to allow for the slope angle of the pile to be reduced. The new toe shall be no closer than 25 feet from the eastern boundary of the property owned by the Respondent or the United States.

In addition, to achieve stable side slopes of no greater than 3H:1 V, the toe of the overburden pile shall be moved north within the property owned by the Respondent or the United States to include portions of the former landslide area.

Geotechnical data to perform the design analysis and construction of the NTCRA shall be gathered, and shall include but not be limited to information that will allow for the evaluation of the water balance, slope stability, geotechnical and agronomic properties of the potential cover and erosion-control materials, and the properties of the subsurface materials in proposed fill areas.

Excess overburden materials that cannot be consolidated within the planned regrade area will be taken to an open pit west of and adjacent to the Pedro Creek ODA and consolidated with an existing in-pit overburden pile (Figure 1). The in-pit consolidation area shall be graded to improve drainage and compacted to reduce infiltration through the waste rock.

2.3 Small Scale Excavation and Consolidation

Small volumes of eroded overburden materials shall be removed from the existing sediment control basins or other areas near the overburden pile. The excavated materials shall be consolidated within the regraded overburden pile. Materials excavated as part of the foundation preparation shall also be consolidated within the regraded overburden pile.

2.4 Surface Water Management

Ditches shall be constructed to convey precipitation runoff away from the NTCRA area as well as the in-pit consolidation area. Run-on control ditches shall be constructed upgradient from the upslope areas to minimize runoff from areas to the west of the overburden pile from crossing the regraded areas, and to convey flow to the perimeter of the regraded area. Run-on control ditches shall also be constructed along the transition from the top area into the steeper side slopes, to reduce runoff flows on the side slopes. Runoff control ditches shall be constructed along the side slopes and along the toe of the regraded pile to convey runoff to temporary sediment detention basins. The ditches shall incorporate riprap or other erosion control measures to minimize erosion. In steeper areas, pipelines may be utilized to convey water collected by the ditches to control erosion. Energy dissipation measures shall be incorporated as needed to reduce erosion at the downstream end of all ditches and/or pipelines where they discharge. Surface water control ditches and

pipelines and appurtenant structures shall be designed to handle the runoff from a 100-year, 24 hour precipitation event, using the Natural Resource Conservation Service method (NRCS 2007). In addition, Best Management Practices (BMPs) shall be implemented for any roads, cleared areas, and borrow areas to control erosion.

Runoff control ditches will also be constructed along the perimeter of the overburden pile in the in-pit consolidation area. Run-off from the in-pit consolidation area will be managed to minimize erosion and/or infiltration through the overburden.

2.5 Surface Modification and Cover

The regraded areas shall be covered with clean Dinwoody Formation-derived soils to reduce infiltration and promote revegetation. The cover design shall include appropriate compaction to reduce infiltration as well as a suitable depth of scarification to promote seed germination, root development, and plant growth.

The average total selenium concentration in the soil-cover materials shall not exceed 5.0 mg/kg. If cover materials are encountered in the borrow area that have total selenium concentrations between 5.0 and 13.0 mg/kg, those cover materials shall be blended with cover materials that have total selenium concentrations below 5.0 mg/kg, such that the average total selenium concentration of the blended cover materials is less than 5.0 mg/kg. In no case shall any cover materials be used that have total selenium concentrations greater than 13.0 mg/kg. The 13.0 mg/kg is derived from work conducted in Southeastern Idaho by Mackowiak, C.L., et. al., (2004).

The Dinwoody Formation cover shall be a minimum of 12 inches deep on the flatter areas on top of the regraded pile and on the upslope areas to the west of the pile. The Dinwoody Formation cover shall be a minimum of 18 inches deep on the side-slope areas (those areas regraded to a slope of 3H:1V). The cover soils shall be amended as needed with fertilizer, mulch, and/or organic materials (such as composted manure) to promote vegetative growth. The regraded areas shall be revegetated using native species that have been demonstrated to minimize selenium uptake, and that have shallow rooting zones. The revegetated areas shall also be treated with hydromulch containing a tackifier to reduce erosion until the revegetation is established.

2.6 Sediment Control Basins.

The existing sediment control basin shall be excavated, enlarged, and reconstructed. In addition, one or more new sediment control basins shall be constructed to remove sediments from run-off from the southern portion of the overburden pile. The capacity and size of all basins shall be maximized based on the area available. The basins' capacity volumes shall be established using best available technologies and engineering design practices to maximize capacity and effectiveness of sediment removal. The basins' dike structure, overflow devices, and discharge channels shall be designed and constructed/reconstructed to accommodate the flow generated from the 100-year/24-hour storm event. Also, all basin design features such as spillways and downstream check dams (if required) shall be sized and protected from erosion caused by the flow velocities generated from the 100-year/24-hour storm event.

2.7 BMPs During Construction

BMPs shall be implemented during construction to minimize erosion, sedimentation, and dust generation. The BMPs shall include, but not necessarily be limited to, silt fences, straw bales, fuel storage/ handling

and/or waste staging/storage areas, temporary sedimentation ponds, and/or watering to control dust generation.

2.8 Reclamation

Borrow areas, areas that were cleared to support construction, and roadways that are no longer needed following construction shall be reclaimed and restored as practicable to resemble pre-disturbed conditions. Reclamation activities include, but are not limited to re-grading and reshaping, amending and applying topsoil if necessary, and reseeding with native vegetation.

2.9 Access Controls

Fencing shall be installed around the sediment control basins and any seeps or springs within the footprint of the NTCRA, having selenium concentrations at or exceeding the 5 t_{tg}/1 water quality standard. In addition, temporary fencing may be implemented to control access and allow the new vegetation to establish without disturbance. Livestock grazing will continue to be restricted on the revegetated surfaces of the overburden pile until post removal-action sampling has determined that the plants on the pile are acceptable for livestock consumption. The final Risk Assessment will evaluate what levels of selenium in plants are protective.

3.0 NTCRA DESIGN AND IMPLEMENTATION

The Respondent shall prepare NTCRA design and implementation documents. Although the contents of the Design Reports and Implementation Plans are described separately in this section, the Agencies determined that the design and implementation documents can be combined into one Design and Implementation Plan with appropriate appendices. The Conceptual (30 percent) and Pre-Final (90 percent) Design and Implementation Plans shall be submitted to EPA, IDEQ, and BLM and other support agencies in accordance with the schedule set forth in Section 6 of this SOW.

3.1 NTCRA Design

The Respondent shall develop a site-specific design which when implemented, will improve the long-term stability of the overburden pile and reduce release of selenium. As part of the design process, the Respondent shall prepare design documents, including construction plans and specifications, to implement the NTCRA as described in Section 2 of this SOW, as well as necessary operations and maintenance (O&M) requirements, quality assurance and control, and safety requirements.

3.1.1 Design Principles

The NTCRA design shall be guided by current generally-accepted engineering practices, applicable information derived from similar projects, as well as findings from any site-specific testing (e.g., fill placement tests and settlement studies). The design shall meet the removal action objectives and provide for cost-effective constructability using standard and safe construction techniques. The Respondent shall ensure that the final configuration of the pile is stable and suitable for successful performance of the soil cover (i.e., proper drainage patterns, vegetation growth, and reduction of infiltration).

3.1.2 Conceptual Design Document

The Respondent shall submit conceptual design documents when the design effort is approximately 30 percent complete. At a minimum, the conceptual design documents shall include the following:

- A conceptual design report that includes the design approach, major design assumptions, design inputs including but not limited to codes, standards, proposed dimensional modeling, and preliminary design calculations (for sizing all major design features), preliminary geotechnical report, and preliminary seismic stability analyses.
- Preliminary drawings with drawing index including plans, sections, profiles and details for all major design features, sufficiently complete to show the design intent.
- An outline of the technical specifications.
- Identification of any additional design data needs.
- Major equipment identification.
- Status of Action Memorandum and/or EE/CA assumptions (including, but not limited to, estimation of excavation and fill volume, borrow material volumes)

3.1.3 Draft Pre-Final Design Documents

The Respondent shall submit draft Pre-Final design documents when the design effort is 90 percent complete. At a minimum, the draft design documents shall include the following:

- A pre-final design report summarizing the design approach, seismic stability analysis, design parameters, design criteria, technical specifications, grading plan, and design calculations. The design report shall also include a discussion of O&M requirements and approach, and describe how the NTCRA implementation/O&M will be integrated.
- Plans and drawings showing all features and details of the construction.
- A geotechnical report summarizing the geotechnical investigations and conclusions.
- Reports summarizing the results of any other design investigations including, but not limited to, data validation reports.
- Capital and O&M cost estimate. This cost estimate shall be refined from the estimates provided in the Final Engineering Evaluation/Cost Analysis (EE/CA) (Formation, 2010) to reflect the detail presented in the draft design.

3.1.4 Final Design Documents

Respondent shall submit final design documents which shall fully incorporate all Agency comments on the draft design documents and shall include all elements listed in Section 3.1.1 above for the draft design documents.

3.1.5 Engineering Change Orders

Design changes identified as necessary to the approved final design prior to initiation of construction shall be documented with an Engineering Change Order (ECO) and submitted to EPA, IDEQ, and BLM (when the ECO is on lands administered by the BLM) for review. If EPA/IDEQ/BLM determine that the ECO does not constitute a significant design change, comments (if any) will be provided to the Respondent on the ECO. Respondent shall incorporate EPA/IDEQ/BLM comments and issue a final ECO. If EPA/IDEQ/BLM

determine that the ECO constitutes a significant design change, comments on the draft ECO may be submitted to the Respondent. Respondent shall address and/or incorporate the comments and shall submit a final ECO to EPA/IDEQ/BLM for signature prior to implementing the changes noted in the ECO. Respondent shall work with the Agency representative(s) to collaboratively resolve any substantive design changes identified as necessary during the construction process.

3.2 NTCRA Implementation

Respondent shall implement the NTCRA construction in accordance with the Design Documents, ECOs, and Implementation Plan (see below for requirements of the Implementation Plan). Simplot shall notify EPA, IDEQ, and BLM at least ten calendar days prior to initiating construction activities.

3.2.1 Draft NTCRA Implementation Plan

Respondent shall submit a draft Implementation Plan that shall include the following elements: Description of general means and measures for the construction activities, including but not limited to work to be performed, overview of construction sequencing, construction equipment to be utilized, site access and construction traffic, and petroleum products handling and storage; Contact information for Simplot and any construction contractor, including emergency contact numbers; Construction Quality Assurance/Quality Control (QA/QC) plan; Health and Safety Plan (HASP) for the construction activities; Wetland and Habitat Delineation; Cultural and Archeological Resources Survey Report; Tabular Summary of Applicable or Relevant and Appropriate Requirements (ARARs) with references to document(s) where each ARAR is/will be addressed; Sampling and Analysis Plan (SAP) for chemical and geotechnical analyses required for the construction activities, including or referencing a Quality Assurance Project Plan (QAPP); a Field Sampling Plan (FSP); Storm Water Pollution Prevention Plan (SWPPP) including BMPs and any associated monitoring; Well Installation Plan (unless mutually agreed that this will be a stand-alone work plan); and a Construction Schedule showing construction phasing, task linkages, significant milestones, and critical path items.

3.2.1.1 Construction Quality Assurance/Quality Control Plan

Construction Quality Control (CQC) and Construction Quality Assurance (CQA) protocols, consistent with site-specific conditions and construction methods, shall be developed and implemented to assure that the NTCRA is constructed in conformance with approved plans and specifications. CQC is the process of data collection, inspections, and testing to verify that materials and construction meet approved plans, technical specifications, and other requirements identified in the approved Quality Control Plan. CQC includes activities both before and during construction to ensure materials and workmanship are compliant with the approved requirements. CQA provides independent oversight and assurance that the CQC program is properly implemented. The CQA process reviews and verifies the CQC results; discrepancies are identified, corrected, and documented. CQA is performed by a party independent of the party responsible for construction and his contractors/subcontractors.

The respondent shall prepare a CQC and CQA Plan that describes the planned observations and tests to ensure that the final construction meets the design specifications and describes the process to ensure that materials and materials installation meet the manufacturer's or project specifications.

CQC shall include, but not be limited to, the inspection of the installation of any pipe, turf reinforcement mat, silt fence, and other erosion-control devices, seed and mulch, precast concrete structures, grout,

geotextiles, articulated concrete block mat cables (if used) and other miscellaneous materials, required geotechnical testing of earthwork and various materials, and construction reporting and communications. CQA shall include but not be limited to construction inspection and management, verification sampling and testing of earthwork and various materials, review of material submittals, and reporting and communications pertaining to the CQA process.

CQA/CQC Documentation — CQA and CQC information regarding the engineering testing and analyses shall be submitted to EPA, IDEQ, and BLM in the monthly reports and Final Construction Completion Report.

3.2.1.2 Health and Safety Plan

The HASP shall be designed to protect on-site personnel, area residents, and visitors to the NTCRA facilities from physical, chemical, and all other hazards posed by this Removal Action. The HASP shall include the following items:

- Facility Description
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring Personal protective equipment
- Personal Hygiene
- Decontamination--personal and equipment Site work zones
- Contaminant control
- Contingency and emergency planning Logs, reports, and record keeping

The HASP shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, pursuant to 40 CFR Part 300.150, the plan shall comply with all currently applicable Occupational Safety and Health Act ("OSHA") requirements, standards and regulations found at 29 C.F.R. Part 1910; (Occupational Safety and Health Standards), Part 1926 (Construction Standards), including the General Industry Standards found in Part 1910, and the general duty requirements of section 5(a)(1)(29 U.S.C. 654 (a)(1); and any other applicable safety laws and regulations. If EPA, IDEQ, and BLM determine that it is appropriate, the plan shall also include contingency planning. The Respondent shall submit a draft HASP to EPA, IDEQ, and BLM for review. A final HASP shall be prepared that incorporates the Agency comments on the draft HASP. If EPA, IDEQ, and BLM determine that existing HASP(s) for other areas of the site adequately address health and safety issues, the existing plans can be referenced.

3.2.1.3 Wetland Habitat Delineation

In accordance with 40 CFR Section 6.302, the Respondent shall conduct an assessment to delineate any wetlands within the project areas. The wetland delineation shall be conducted in substantive compliance with the U.S. Army Corps of Engineers Wetland Delineation Manual (USACE, 1987). The Respondent shall prepare a report documenting whether the NTCRA will be located in, or will affect, any jurisdictional wetlands. The report shall include, but not be limited to, base maps wherein any wetlands are identified using sub-meter accurate Global Positioning System.

In addition to the wetlands delineation report, the Implementation Plan shall include measures for addressing any jurisdictional wetlands that may be impacted by the NTCRA in accordance with the substantive requirements of Section 404 of the Clean Water Act (40 CFR 230 and 33 CFR 320-330).

3.2.1.4 Cultural Resource Survey

The respondent shall conduct a cultural resource survey, which shall include:

- 1) A cultural resource review of records on file at the Idaho State Historic Preservation Office (SHPO) to determine potential locations of prior cultural resources inventories and previously recorded cultural resource sites in the NTCRA vicinity; and
- 2) An on-the-ground identification of potential cultural resources within the NTCRA area.
- 3) In addition to the Cultural Resources Survey, the Implementation Plan shall include a procedure for addressing any unexpected archaeological and /or Paleontological Discoveries encountered during construction.

3.2.1.5 Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and laboratory analysis and testing meet the Data Quality Objectives (DQOs). The SAP shall include a FSP and a QAPP. The FSP shall define in detail the sampling and data-gathering methods that will be used during the NTCRA. It must include sampling objectives, sampling frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and QA/QC protocols that will be used to achieve the desired DQOs. In addition, the QAPP shall address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

All sampling and chemical analyses performed pursuant to this Settlement Agreement/CO shall conform to Agency direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the chemical analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow "Guidance for Quality Assurance Project Plans" (EPA QA/G-5, December, 2002), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002. March 2001)," or equivalent documentation as determined by EPA, IDEQ and BLM. EPA, IDEQ and BLM may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

All geotechnical analyses performed pursuant to this Settlement Agreement/CO shall also conform to Agency direction, approval, and guidance regarding sampling, QA/QC, and chain of custody procedures. Respondent shall ensure that the laboratories used to perform the geotechnical and geochemical analyses participate in a QA/QC program accredited by the American Association for Laboratory Accreditation.

QA Monitoring - Upon request by EPA, IDEQ and BLM, Respondent shall have such a laboratory analyze samples submitted by EPA, IDEQ and BLM for QA monitoring. Respondent shall provide to EPA, IDEQ

and BLM the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Split Sampling - Upon request by EPA, IDEQ and BLM, Respondent shall allow EPA, IDEQ and BLM and/or their authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA, IDEQ and BLM not less than 10 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA, and IDEQ. EPA, IDEQ and BLM shall have the right to take any additional samples that EPA/IDEQ/BLM deem necessary. Upon request, EPA and IDEQ/BLM shall allow Respondent to take split or duplicate samples of any samples it takes as part of their oversight of Respondent's implementation of the Work.

QA/QC Documentation - Respondent shall document the quality and validity of laboratory data compiled during construction and the post-NTCRA monitoring phases. For all chemical samples collected, data validation summaries must be submitted 90 calendar days from the date of collection of the last sample from each sampling event. During the NTCRA construction period, data validation summaries shall be submitted to EPA, IDEQ, and BLM in the monthly reports, when available.

3.2.1.6 Storm Water Pollution Prevention Plan

A SWPPP shall be developed for the NTCRA to describe how surface-water quality shall be maintained by reducing pollutants in storm-water discharges during the NTCRA construction. This SWPPP shall identify BMPs which will provide the necessary control required to reduce pollutants in storm-water discharges. The SWPPP shall achieve substantive compliance with Best Available Technology (BAT) and Best Conventional Technology (BCT), as mandated by the Federal Clean Water Act. After completion of the project, the mine-wide SWPPP may be modified to incorporate this project.

3.2.1.7 Monitoring Well Installation Plan

A minimum of two nested monitoring wells shall be constructed—a shallow well to monitor the alluvial groundwater, and a deeper well to monitor groundwater within the Dinwoody formation. The Monitoring Well Installation Plan shall describe the well locations, well types, drilling and construction methods, planned lithological and geochemical data gathering, and detailed Standard Operating Procedures.

3.2.2 Final NTCRA Implementation Plan

Respondent shall submit a final Implementation Plan which shall fully incorporate all Agency comments on the draft Implementation Plan and shall include all elements listed above for the draft Implementation Plan.

3.2.3 Periodic Inspections During Construction

EPA, IDEQ, and BLM, or their designated representatives will make periodic inspections of the construction activities to assure that the NTCRA is proceeding, in substantial compliance with the approved Final Designs, ECOs, and the approved final Implementation Plan. Respondent shall provide full and complete access to EPA, IDEQ, and BLM or their designated representatives during periodic inspections, and as much as practicable, accompany them during these inspections. Any deficiencies in construction or construction not in substantial compliance with the approved Final Designs, ECOs, and the approved final Implementation Plan will be noted during periodic inspections. Upon notification by EPA/IDEQ/BLM of any deficiencies in construction or construction not in substantial compliance with the approved Final

Design, ECOs, and/or final Implementation Plan, Respondent shall take necessary steps to correct the deficiencies and/or bring the construction into compliance with approved Final Designs, ECOs and/or final Implementation Plan, or institute dispute resolution under the Settlement Agreement/CO.

3.2.4 Periodic Reports

During the course of construction, the Respondent shall prepare weekly and monthly reports. The weekly reports shall provide a summary of construction progress, construction issues, scheduling issues, accidents/health and safety issues, resolution of any issues, and a summary of weather conditions during the reporting period. The monthly reports shall include a summary of all work performed during that month, including construction, well drilling/installation, water level data, sampling and analysis, updated schedule, and issues/resolutions. The monthly reports shall include a summary of deliverables (including any changes to deliverables or their schedules), and work planned for the subsequent month. The monthly reports shall also include a copy of the weekly reports as attachments. The weekly reports shall be submitted to EPA, IDEQ, and BLM in electronic format within three (3) working days following the conclusion of each period (reporting periods will end every Friday). The monthly reports shall be submitted electronically and by hard copy to EPA, IDEQ, and BLM within ten working days following the end of the calendar month.

3.2.5 Pre-Final Inspection

When the Respondent makes a preliminary determination that construction is complete, Respondent shall notify EPA, IDEQ, and BLM for the purposes of conducting a pre-final inspection. The pre-final inspection shall consist of a walk-through inspection of the facilities constructed as part of the NTCRA. The inspection is to determine whether the project is complete and consistent with the approved Final Designs, ECOs and the Final Implementation Plan. Any outstanding construction items discovered during the inspection shall be identified and noted. Respondent shall prepare a pre-final inspection report that shall outline the outstanding construction items, actions required to resolve items, and estimated completion date for these items.

3.2.6 Final Inspection

Within five working days after completion of any outstanding work identified in the pre-final inspection report, Respondent shall notify EPA, IDEQ, and BLM for the purposes of setting a date for conducting a final inspection. If EPA, IDEQ, and BLM determine that a final inspection is necessary, the final inspection shall consist of a walk-through inspection of the facilities constructed as part of the NTCRA. The pre-final inspection report shall be used as a checklist with the final inspection focusing on the outstanding construction items identified in the pre-final inspection. A final inspection report shall be prepared by the Respondent confirming that outstanding items have been addressed.

3.2.7 Construction Completion Report

Within forty-five calendar days of a successful final inspection, Respondent shall submit a Construction Completion Report. In the report, a professional engineer registered in the State of Idaho and the Respondent's Project Coordinator shall state that the NTCRA has been constructed in accordance with the Final Design, ECOs and the Final Implementation Work Plan. The written report shall include as-built drawings signed and stamped by a professional engineer registered in the State of Idaho, an estimate of total costs for the NTCRA, and well logs and final well construction information.

4.0 POST-REMOVAL SITE CONTROL PLAN

The Respondent shall prepare a draft PRSC Plan, which shall include an O&M Plan and a Monitoring Plan. A final PRSC Plan shall be prepared that incorporates the Agency comments on the draft PRSC Plan.

4.1 Operation and Maintenance Plan

The Respondent shall prepare an O&M Plan for the Removal Action facilities. The O&M Plan shall include the following elements:

- 1) Description of normal operation and maintenance, including regular operation and maintenance tasks, periodic facility inspections, sample checklists and periodic O&M reports, health and safety requirements, and schedule frequency for the various O&M tasks.
- 2) Description of potential operational problems that may be encountered and potential corrective actions for those operational problems.
- 3) Actions to be taken in the event of a failure or potential failure of any of the elements of the NTCRA that might result in a release of contaminants to the environment. The description of actions to be taken must include a listing of potential failure events and failure modes, along with potential corrective actions to address or mitigate those failures. A list of contacts to be notified in the event of a failure or imminent failure must also be included.
- 4) Procedures for modifying the O&M Plan, including notification and distribution requirements for revisions to the O&M Plan.
- 5) HASP for maintenance personnel, or reference to an existing HASP which covers site workers.
- 6) Summary of recording and reporting requirements, including sample forms for periodic operating and inspection logs, records for O&M costs, mechanisms for reporting emergencies, actions taken to address failures or potential failures, and annual O&M reports to EPA, IDEQ, and BLM.

4.2 Monitoring Plan

Respondent shall prepare a Post-NTCRA Monitoring Plan. The Monitoring Plan shall be developed primarily to evaluate the effectiveness of the NTCRA and shall include the following elements:

- 1) A description of the media to be sampled. This shall include surface water, groundwater, sediments, cover soils, and vegetation.
- 2) A description of locations/station/areas to be sampled. Surface water shall be sampled from discharge point(s) at the ODA toe and at the existing Pedro Creek surface water monitoring locations. Groundwater shall be sampled from wells constructed as close as practicable to the base of the regraded overburden pile. Sediments shall be sampled at the existing Pedro Creek sediments sampling sites. Soil samples shall be collected to determine the potential recontamination of the cover soils. Vegetation shall be sampled to determine the potential recontamination of the vegetation on the cover.
- 3) A description of the monitoring frequency and the analytes that will be measured for each of the media during each monitoring event.
- 4) A description of the DQOs.
- 5) A QAPP covering sample collection, transport, analysis, and data validation. This QAPP shall meet the requirements of EPA's National Functional Guidelines and shall be consistent with the requirements of EPA's Contract Lab Program (CLP) for laboratories proposed outside of the CLP. If

EPA/IDEQ/BLM determine that the existing QAPP for the overall Conda site adequately covers the NTCRA monitoring, the existing QAPP can be referenced in the Monitoring Plan.

5.0 Post-Removal Site Control Annual Report

A comprehensive PRSC annual report for the NTCRA shall be prepared each year by the Respondent. The PRSC annual report shall provide text summarizing all of the operation, maintenance, and monitoring conducted during the previous year to include tables and figures providing the details of the monitoring information. A draft of the PRSC report shall be submitted to EPA, IDEQ, and BLM by March 31 of the year following each year's monitoring. A final of the PRSC report shall be submitted within 45 calendar days of receipt of Agency comments or resolution of Agency comments (if resolution of comments is necessary). The requirement for the PRSC annual report will end upon the Effective Date of Consent Decree signed by Simplot for implementation of remedial action at the Site, providing that the Consent Decree includes reporting requirements equivalent to those set forth in this subsection.

5.1 Modifications to the Post-Removal Site Control Plan

EPA, IDEQ, and BLM will evaluate the O&M and monitoring requirements included in the PRSC Plan on a regular basis and may modify the plan based on a mutual consensus of the parties. It is anticipated that, over time, the amount and type of O&M and the frequency of monitoring will be modified. If a determination to modify the plan is made, the Respondent shall modify the PRSC Plan in accordance with comments and instructions provided by EPA, IDEQ, and BLM.

6.0 SUMMARY OF MAJOR DELIVERABLES AND SCHEDULE

Attachment 1 includes a list of required deliverables and schedules for their submittal. Days shall mean calendar days, unless otherwise noted. The schedule included in Attachment 1 is fully enforceable under Sections VIII and XIX of the Settlement Agreement/CO.

7.0 REFERENCES

ACE, 1987, Wetlands Delineation Manual, Wetlands Research Program Technical Report Y-87- 1, January 1987.

American National Standard ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs"

EPA. 2002. Guidance for Quality Assurance Project Plans (QA/G-5), (EPA/240/R-02/009, December 2002)

EPA. 2001. EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)

EPA. 1992. Standard Operating Safety Guides, PB92-963414, June 1992.

Formation. 2010. Engineering Evaluation/Cost Analysis Conda/Woodall Mountain Mine Pedro Creek Overburden Disposal Area Early Action. October.

IDEQ, EPA, BLM. 2011. Request for a Non-Time Critical Removal Action to be conducted on the Pedro Creek Overburden Disposal Area of the former Conda/Woodall Mountain Phosphate Mine Site, Caribou County, Idaho

Mackowiak, C.L., and Amacher, M.C., 2005. Plant Uptake of Selenium from Soils Overlying Unmined Sedimentary Rock Units and Potential Use of These Soils as Capping Materials for Revegetated Waste Rock Dumps.

NCP 2003. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR. Part 300, July 1, 2003.

National Resource Conservation Service (NRCS), 2007. Win TR-55 Watershed Hydrology Software, U.S. Department of Agriculture.

ATTACHMENT 1
Schedule for Deliverables Submittals for the NTCRA
(All days are calendar days)

Design and Implementation Plan

Respondent shall submit a 30 percent Draft Design and Implementation Plan within 30 days after effective date of the Settlement Agreement/CO

21 days for Agencies to submit comments

14 days for Respondent to submit responses to Agency comments

Agencies will notify Respondent regarding the need and schedule for a comment resolution conference call.

Respondent shall submit a 90 percent Draft Design and Implementation Plan within 40 days after notification by the Agencies that a comment resolution call on the 30 percent Design and Implementation Plan is not required or from the date of the call, if held.

28 days for Agencies to submit comments

21 days for Respondent to submit responses to Agency comments

Agencies will notify Respondent on the need and schedule for a comment resolution conference call.

21 days for Respondent to submit Final Design and Implementation Plan from notification by Agencies that a comment resolution conference call is not required or from the date of the call, if held.

The Agencies will notify Respondent on the approval to proceed with construction of the NTCRA.

Construction

Respondent shall commence construction per the schedule set out in the approved Implementation Work Plan.

Weekly Construction Reports

Respondent will submit weekly reports during periods of active construction within 3 working days of every Friday.

Monthly Construction Reports

Respondent will submit monthly reports during periods of active construction within 10 working days of the end of the month.

Draft Post Removal Site Control (PRSC) Plan

Respondent shall submit draft PRSC report within 120 days after the Design and Implementation Plan is approved.

60 days for Agencies to submit comments

21 days for Respondent to submit responses to Agency comments

Agencies will notify Respondent on the need and schedule for a comment resolution conference call.

30 days for Respondent to submit final PRSC from notification by Agencies that a comment resolution conference call is not required or from the date of the call, if held.

Final Construction Completion Report

Respondent shall submit a final construction report within 60 days after the final construction inspection.

45 days for Agencies to submit comments

21 days for Respondent to submit responses to Agency comments

Agencies will notify Respondent on the need and schedule for a comment resolution conference call.

45 days for Respondent to submit final construction report from notification by Agencies that a comment resolution conference call is not required or from the date of the call, if held.

Annual PRSC Report

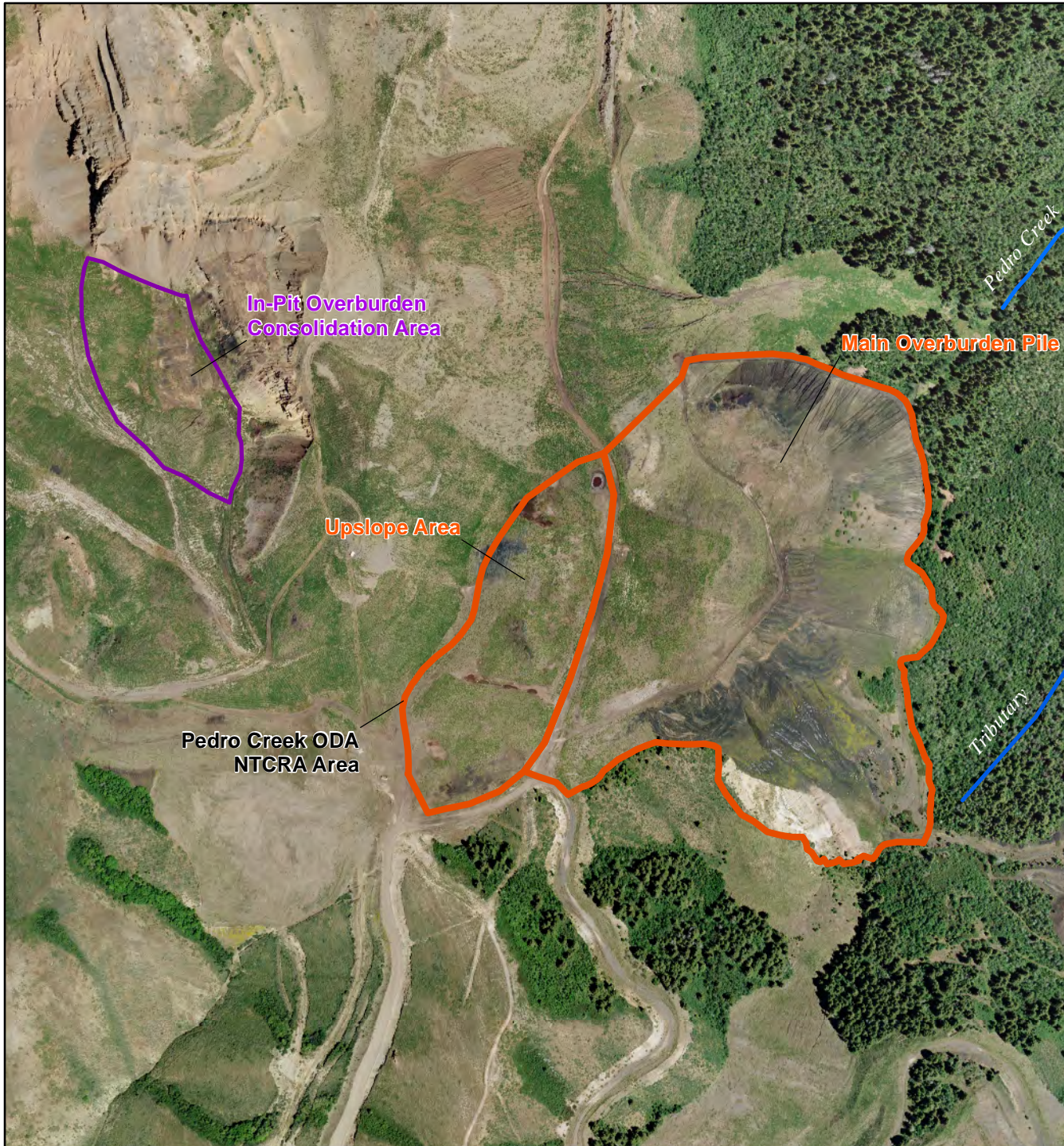
Respondent shall submit Annual PRSC reports by March 1 of the year following each year's monitoring.

45 days for Agencies to submit comments



21 days for Respondent to submit responses to Agency comments

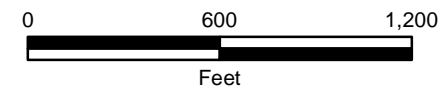
Agencies will notify Respondent on the need and schedule for a comment resolution conference call.

30 days for Respondent to submit final PRSC from notification by Agencies that a comment resolution conference call is not required or from the date of the call, if held.



Legend

-  In-Pit Consolidation Area
-  Pedro Creek ODA



J.R.SIMPLIT COMPANY
CONDA/WOODALL MOUNTAIN
PEDRO CREEK REMOVAL ACTION

FIGURE 1

PEDRO CREEK ODA REMOVAL ACTION FEATURES

DATE: FEB, 17, 2012

BY: CRL

FOR: RPS

FORMATION

ENVIRONMENTAL



State of Idaho
Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706



U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

DATE: July 13, 2011

TO: Toni Hardesty, Director
Department of Environmental Quality

Daniel D. Opalski, Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10

Steven Ellis, Idaho State Director
Bureau of Land Management

FROM: Margie English, DEQ Project Manager

Fran Allans, EPA Remedial Project Manager

THRU: Bruce Olenick, DEQ Regional Administrator
Pocatello Regional Office

Chris D. Field, Program Manager
Emergency Management Program, Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10

Joe Kraayenbrick, District Manager
Idaho Falls District, Idaho
Bureau of Land Management

SUBJECT: Request for a Non-Time Critical Removal Action to be conducted on the Pedro Creek Overburden Disposal Area of the former Conda/Woodall Mountain Phosphate Mine Site, Caribou County, Idaho

I. PURPOSE

The purpose of this action memorandum is to request and document approval of the selection of the proposed non-time-critical removal action within the boundaries of the Conda/Woodall Mountain Phosphate Mine Site, Caribou County, Idaho (Site). The proposed removal action is described herein and addresses mine wastes contaminated with hazardous substances including selenium and metals located in the un-reclaimed Pedro Creek Overburden Disposal Area (ODA) at the Site. The removal action will be conducted and funded by the J.R. Simplot Company (hereafter referred to as Simplot). Implementation of the removal action will be pursuant to a Settlement Agreement/Consent Order (CO) between the Idaho Department of Environmental Quality (DEQ), the United States Environmental Protection Agency (EPA), the United States Department of the Interior (Interior), Bureau of Land Management (BLM), and Simplot. The removal action will be conducted in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with oversight by EPA, and oversight by DEQ pursuant its State environmental authorities. BLM will exercise its CERCLA authority on lands at this Site subject to BLM's jurisdiction, custody, or control. In exercising such authority, BLM will participate as a cooperating agency to EPA. This action meets the criteria for initiating a removal action under the National Contingency Plan (NCP), 40 CFR §300.415.

II. SITE CONDITIONS AND BACKGROUND

The CERCLIS ID No. is IDN001002862 and the Site ID No. is 1002862.

A. Site Description

1. Removal site evaluation

The Conda/Woodall Mountain Mine is an inactive phosphate mine located in Caribou County, Idaho (Figure 1). The mine produced phosphate ore under various operators from 1906 to 1984. Mining initially occurred underground, transitioning into open pit mining in the early 1950s. Simplot became the mine operator in 1960. Although the mine is inactive, the mineral leases at the Site are still active mineral leases. The Pedro Creek ODA is contained within mineral lease I-04494.

During open pit mining, surface soils and rock (called "overburden") were excavated from the mining pits to expose the phosphate ore. Overburden was either backfilled into the pits or placed in external ODAs. The overburden rock units generally consist of Rex Chert Member and/or mudstones and shales of the Meade Peak Member of the Phosphoria Formation. These overburden rock units contain naturally elevated levels of selenium and other trace metals. Handling and disposal of overburden accelerated both physical and chemical weathering processes, resulting in releases of selenium and other contaminants (metals) to the environment. Once these contaminants of potential concern (COPCs) are released through this oxidation and dissolution process, those COPCs may be transported by groundwater, surface water, sediments, or by direct plant uptake. Selenium has the widest distribution and greatest exceedances of risk-based benchmark concentrations and is therefore the contaminant of greatest potential impact and highest concern, and the focus of this removal action. Between 1997 and 2003, several

hundred sheep died while grazing the Site. The livestock deaths may have been caused by selenium toxicity.

The Pedro Creek ODA is one of several ODAs located along the eastern side of Woodall Mountain. This ODA has released high levels of contaminants to the surface water and shallow groundwater, as well as elevating concentrations of selenium in surface soils, sediments, and vegetation. Additionally, the ODA has very steep side slopes which are potentially unstable and subject to further erosion and downslope movement, which could result in additional substantial releases to the environment.

A large amount of characterization data was collected from the Pedro Creek ODA and down-gradient area between 2001 and 2010, including samples of surface water, groundwater, soils, sediment, vegetation, macroinvertebrates, and fish tissue. The data collected through 2009 are the basis for determining the need for the early action and are summarized in this action memorandum with emphasis on the selenium results. It is likely that actions taken under this removal action to address selenium will also help to mitigate threats posed by the other co-located COPCs.

A Preliminary Assessment (PA) was conducted for the Site in August 2008 by Ecology and Environment under contract to the EPA. The Remedial Investigation/Feasibility Study (RI/FS) for the Site is ongoing and the current schedule targets an RI/FS completion date in 2013. The RI/FS will fully evaluate all of the characterization data, including information pertaining to contaminants other than selenium, to determine the nature and extent of contamination and any associated threat to public health, welfare, or the environment. The RI/FS will also evaluate alternatives for remedial actions to prevent, mitigate, or otherwise respond to releases of contaminants from the Site. The DEQ, EPA, and BLM will determine in a final Record of Decision whether additional clean up actions at the Pedro Creek ODA are necessary to address surface water, groundwater and/or vegetation on the basis of monitoring conducted after completion of the early action, and information generated during the RI/FS.

2. Physical location and setting

Distance to Nearest Populations, Land Ownership, and Surrounding Land Use

The Conda Mine is located approximately 8 miles northeast of the nearest community, Soda Springs, Idaho. The City of Soda Springs has a population of approximately 3,400. The Pedro Creek ODA is located at Latitude: 42° 44' 50" N Longitude: 111° 30' 39" W. Releases from the ODA have resulted in exceedances of surface water standards along Pedro Creek during high flow conditions from its headwaters at the base of the ODA to the confluence with Trail Creek, approximately 3.2 miles to the east.

The land underlying the Pedro Creek ODA consists of land owned by Simplot and public lands administered by the BLM (Figure 2). Private property belonging to Ms. Alicia Dredge is located approximately 350 feet east of the toe of the ODA. No residents live year-round within the Pedro Creek sub-basin. The nearest residences are ranch houses, used seasonally, on the Dredge property (a.k.a. Jougland Ranch) approximately 1.6 miles southeast of the Pedro Creek ODA.

Site Features and Topography

The Pedro Creek ODA is located at the headwaters of Pedro Creek, in the upper reaches of the Pedro Creek canyon. The Pedro Creek ODA (approximately 60 acres) includes an upslope area, two backfilled pits, and an external overburden pile area. The upslope area (approximately 14.2 acres) of the ODA extends from the Woodall Mountain saddle (to the west) to the upper road that crosses the ODA and then continues north along Woodall Mountain (Figure 2). Two backfilled pits extend within the footprint of the Pedro Creek ODA. The backfilled pits and the external overburden pile are located east from the upper road. The area of the ODA east of the upper road covers approximately 46.5 acres. The top of the Pedro Creek ODA has terraces and sloped areas which promote infiltration. Additionally the ODA has steep and potentially unstable slopes. The elevation of the Pedro Creek ODA ranges from approximately 6,830 feet above mean sea level (AMSL) at the toe to approximately 7,200 feet AMSL in the upslope area. A seep (NES-5) flows year round from the toe of the ODA and forms the headwaters of Pedro Creek.

Geology and Hydrogeology

The stratigraphic sequence (from youngest to oldest) along the eastern slope of Woodall Mountain, including the Pedro Creek ODA, is as follows:

- Alluvium/Colluvium (Quaternary);
- Dinwoody Formation (Triassic);
- Phosphoria Formation, Rex Chert Member (Permian);
- Phosphoria Formation, Meade Peak Member (Permian); and
- Wells Formation (Pennsylvanian/Permian).

The ore-bearing rocks mined at the Conda/Woodall Mountain Mine were Phosphatic shales within the Meade Peak Member of the Phosphoria Formation. The ODAs, including the Pedro Creek ODA, generally consist of shales, mudstones, and limestones that were present either between or above ore bodies within the Meade Peak Member, and overlying the Rex Chert Member.

The most significant structural features along the Woodall Mountain ridgeline are a northwest-trending anticline and syncline and associated fault zones. Woodall Mountain is part of the eastern limb of the north-northwest trending Conda Anticline and the western limb of the Trail Creek Syncline. The anticlines and synclines in this area plunge to the north. The bedrock units underlying the Pedro Creek ODA generally dip in an easterly direction at 40 to 60 degrees.

Groundwater on the east side of Woodall Mountain, including the Pedro Creek ODA, occurs in unconsolidated deposits (alluvium/colluvium) as well as in all of the deeper consolidated

formations (i.e., the bedrock). The bedrock formations are generally the most capable of yielding the amount of groundwater necessary for potential domestic or industrial water-supply use. Shallow alluvium/colluvium groundwater contributes to baseflow in the creeks (predominantly in the lower reaches) and water in livestock watering ponds.

The uppermost water-bearing zone down-gradient from the Pedro Creek ODA is within the alluvium/colluvium. Within the underlying bedrock, the Dinwoody Formation forms the uppermost water-bearing zone. Deeper water-bearing zones stratigraphically below the Dinwoody Formation exist in the Phosphoria Formation (primarily within the Rex Chert) and the Wells Formation. The Wells Formation is the major “regional” aquifer in the area and is most capable of yielding significant amounts of groundwater.

Groundwater flow directions in the region are controlled by geologic, hydrogeologic, and topographic conditions. Flow directions in alluvial groundwater systems generally follow topography and are closely linked to stream discharges. Shallow groundwater contaminated by releases from the Pedro Creek ODA flows eastward from the ODA and discharges both at the NES-5 seep located at the toe of the ODA and in a gaining reach of Pedro Creek, approximately 1.25 miles downstream from the toe. Groundwater flow directions in the bedrock aquifers are affected by structural geology and stratigraphy. Site-wide, groundwater in the bedrock flows to the north following the plunge of the Conda Anticline and Trail Creek Syncline. However, locally there may be a component of eastward flow.

Pedro Creek flows intermittently from the headwaters to the mouth, with most of the flow occurring during spring snow melt. During baseflow conditions, flow in Pedro Creek is generally lost to the subsurface in the uppermost reaches and resurfaces downstream in the lower reaches. Pedro Creek does not have a defined creek channel down-gradient from the ODA until approximately 2200 feet below the toe of the ODA. Pedro Creek flows into Trail Creek approximately 3.2 miles downstream of the ODA, and then almost immediately enters the braided channel of the Blackfoot River. The Blackfoot River flows into the Blackfoot River Reservoir which is located approximately 10 miles northwest of the Site. Below the reservoir, the Blackfoot River joins the Snake River, which ultimately enters the Columbia River.

Climate

The climate is dominated by cool and dry weather, with prevailing winds and weather patterns moving from west to east. The area in which the Site is located receives an average of 19 inches of precipitation annually. In the winter months, total snowfall averages almost 110 inches each year, and snow cover typically remains on the ground from November through March. Snow accumulation is greatest along the east-facing slopes as compared to the west-facing slopes, primarily as a result of prevailing winds which cause drifting. Summer temperatures are mild, normally ranging from 42 to 80 degrees Fahrenheit, while winter temperatures normally range from 9 to 40 degrees Fahrenheit. Streamflow in area streams, including Pedro Creek and the Blackfoot River, is controlled by snow melt, precipitation, and groundwater discharge. Peak

flows generally occur in April through June, during spring runoff, and decline to low-flow conditions by mid- to late summer. As a result of temperatures and resulting snow melt, peak flows generally occur a few weeks earlier in streams flowing at lower elevations (such as the Blackfoot River) than those tributaries at higher elevations (such as Pedro Creek).

Vulnerable or Sensitive Populations, Habitats, and Natural Resources

Pedro Creek is subject to DEQ's water quality criteria (standards) for designated cold-water biota use. The Blackfoot River is designated for cold water aquatic life, salmonid spawning, primary recreation, and domestic water supply. The mainstem of the Blackfoot River from the confluence of Lanes and Diamond Creeks (about 15 miles upstream and east of Conda/Woodall Mountain) to the Blackfoot Reservoir is impaired and thus not fully supporting its beneficial use (Clean Water Act, § 303(d)) due to elevated temperature and concentrations of selenium and low levels of dissolved oxygen.

Table 2-2 of the finalized Pedro Creek EE/CA provides a summary of potential threatened and endangered (T/E) and special-status species present in the region; however, not all of the species are found at the Site. The USFWS has identified on their T/E list for Caribou County the Canada lynx (*Lynx canadensis*), which is listed as threatened, the greater sage grouse and wolverine, which are candidate species, and the gray wolf as experimental/non-essential. There is no designated critical habitat for the Canada lynx within the Site or nearby. The nearest critical habitat is in Lincoln County in southwestern Wyoming. However, patches of potentially suitable habitat are present in mixed conifer forests in southeastern Idaho. The Idaho Department of Fish and Game (IDFG) lists several State-listed T/E species in Idaho Administrative Procedures Act (IDAPA). Although the bald eagle is listed as threatened in IDAPA 13.01.06, it was recommended by IDFG for delisting from T/E species to non-game wildlife species.

3. Site characteristics

The predominant land uses in the vicinity of the Conda mine are associated with natural resources development, crop production, livestock grazing, and recreational use. Private and public lands within and around the Woodall Mountain ODAs (including the Pedro Creek ODA) have historically been used for livestock grazing. Sheep were the predominant type of livestock grazing on these ODAs, with cattle and horses generally pastured in adjacent area to the east. As a result of livestock mortality events in the late 1990s and early 2000s, grazing is currently not allowed on Conda ODAs because of Site contamination. The BLM has restricted grazing on those portions of the Woodall Mountain allotment impacted by mining-related activities. This allotment (#04454) is to remain restricted until selenium can be reduced to acceptable levels.

Current land use on and around the Pedro Creek ODA is recreational (all terrain vehicle [ATV] riding, snowmobiling, and hunting). Because most of the main overburden pile is privately-owned by Simplot, hunting and other recreation uses are generally by invitation only. However, BLM-managed land within the confines of the mine Site is accessible with a Simplot escort.

This is the first CERCLA cleanup action taken at the Site. Other activities conducted outside of CERCLA which may help mitigate site risks are described in Section IIB.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

The COPCs for the Pedro Creek Area include selenium, cadmium, chromium, zinc, and arsenic – all of which are potential hazardous substances or pollutants or contaminants as defined by sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. section 9601(14) and (33).

Numerous regional investigations in southeast Idaho as well as site-specific investigations at Conda have identified overburden materials containing Meade Peak Member shales as the predominant source of selenium released at phosphate mine sites. The distributions of selenium and other COPCs in the media in the Pedro Creek sub-basin, including the area of the Pedro Creek ODA, have been characterized in a series of sampling events conducted from 2001 through 2009. As previously stated, selenium has the widest distribution and greatest exceedances of screening-level benchmarks and therefore serves as an indicator constituent that can be used to characterize the nature and extent of mining-related impacts. For surface water and groundwater, the benchmarks are promulgated water quality standards. Screening-level benchmarks are not derived from a site-specific risk assessment, but indicate potential for unacceptable risk to human and ecological receptors. In general, data for the Pedro Creek ODA show that selenium and other COPCs are present at concentrations significantly exceeding several of the screening-level benchmarks. The following subsections summarize the concentrations of selenium in the media of the ODA and areas down-gradient of the ODA, and compare the selenium concentrations against human health or ecological screening-level benchmarks. The most conservative benchmark, whether human health or ecological, was used for the comparison against the selenium concentrations in each media. Information regarding the references for the screening level benchmarks and comparisons of all COPCs against the benchmarks is included in the EE/CA. Sampling locations are shown in Figure 3.

Soils On and Down-gradient from the ODA

The Pedro Creek ODA extent is well defined based on the detailed documentation on panel development and ODA construction, and the easily discernible waste material and panel boundaries. Soil samples collected from the surface of the ODA have selenium concentrations ranging from 1 to 252 mg/Kg, with an average concentration of 55 mg/Kg. The maximum concentration is 485 times the ecological screening level benchmark of 0.52 mg/Kg (EPA's Ecological Soil Screening Level or EcoSSL), while the average concentration is 106 times the ecological benchmark. The selenium concentrations in soil samples down-gradient of the ODA range from 0.2 to 95.7 mg/Kg, with an average concentration of 14 mg/Kg (maximum is 185 times and average is 27 times the ecological benchmark).

Surface Water Down-gradient from the ODA

Pedro Creek down-gradient from the ODA is an intermittent stream with portions of the creek flowing year round. In general, selenium concentrations in Pedro Creek are higher near the headwater locations closest to the ODA (Reach 1, Figure 3), ranging from 1.13 to 4.08 mg/L, with an average of 2.25 mg/L. In addition, concentrations are typically highest in the spring when there is maximum run-off from and infiltration through the ODA resulting from snow melt and seasonal storms. The maximum selenium concentration is 816 times and the average is 450 times the ecological benchmark of 0.005 mg/L (Idaho surface water quality standard or IWQS). Selenium concentrations decrease in the downstream reaches of Pedro Creek; ranging from non-detect to 0.346 mg/L, with an average of 0.033 mg/L near the mouth of Pedro Creek, (maximum is 69 times and average is 7 times the ecological benchmark of 0.005 mg/L).

Sediments Down-gradient from the ODA

Selenium concentrations in the in-stream sediments in Pedro Creek generally show a decreasing trend from upstream to downstream. The selenium concentrations in sediments in the headwaters of Pedro Creek (Reach 1, Figure 3) range from 1.0 to 717 mg/Kg, with an average of 77 mg/Kg. The maximum selenium concentration is 18 times and the average is twice the human health benchmark of 39 mg/Kg (there are no commonly accepted ecological benchmarks for selenium in sediments). Near the mouth of Pedro Creek, the selenium concentrations in sediments range from 1.0 to 29.6 mg/kg, with an average of 13.0 mg/Kg (both the maximum and average concentration are below the human health benchmark of 39 mg/Kg).

Groundwater Down-gradient from the ODA

Shallow alluvium/colluvium groundwater immediately down-gradient from the Pedro Creek ODA is best characterized by a seep emanating from near the toe of the ODA (NES-5). In addition, two shallow alluvium/colluvium monitoring wells (GW-28 and GW-30), and one deeper well in the Dinwoody Formation (GW-29), were installed further down-gradient from the Pedro Creek ODA. Monitoring wells GW-28 and GW-29 are located approximately 2200 feet down-gradient of the toe of the ODA, and monitoring well GW-30 is located even further down-gradient, approximately 1.4 miles east of the ODA (Figure 3).

Shallow alluvium/colluviums groundwater conditions. The selenium concentrations in the seep near the toe of the ODA (NES-5) range from 0.54 to 6.89 mg/L, with an average of 3.32 mg/L. The maximum concentration is 138 times and the average concentration is 66 times the human health benchmark of 0.050 mg/L (the Idaho Groundwater Quality Standard and also the federal Maximum Contaminant Level [MCL]). Selenium concentrations in the shallow aquifer further down-gradient from the ODA (well GW-28) range from 0.935 mg/L to 1.19 mg/L, with an average of 1.06 mg/L (the maximum is 24 times and the average is 21 times the human health benchmark of 0.050 mg/L). At the most down-gradient shallow well (GW-30), the selenium concentrations ranged from 0.0022 to 0.0048 mg/L, with an average of 0.0039 mg/L. All

measured selenium concentrations in this most down-gradient shallow well were less than the human health benchmark of 0.050 mg/L.

Deeper groundwater conditions in the Dinwoody Formation. The groundwater conditions in the aquifer immediately beneath the shallow alluvial/colluvial aquifer are represented by well GW-29. The selenium concentrations in this well range from 0.030 to 0.032 mg/L with an average concentration of 0.031 mg/L. All measured selenium concentrations in this well are below the human health benchmark of 0.05 mg/L. Well GW-29 is located approximately 2200 feet down-gradient from the ODA so it does not likely represent the groundwater concentrations in the Dinwoody Formation immediately down-gradient from the ODA. An additional well into the Dinwoody Formation near the toe of the ODA is planned to better characterize the selenium concentrations in the deeper Dinwoody aquifer near the ODA.

Vegetation On and Down-gradient from the ODA

Selenium concentrations in vegetation growing on the ODA ranged from 0.19 to 555 mg/Kg, with an average concentration of 43.7 mg/Kg. The maximum selenium concentration is 194 times and the average is 17 times the ecological benchmark of 2.6 mg/Kg (based on the Area-Wide Risk Management Plan or AWRMP). The selenium concentrations in vegetation growing down-gradient from the ODA range from 0.03 to 106 mg/Kg, with an average concentration of 20 mg/Kg (maximum is 41 times and the average is 8 times the ecological benchmark of 2.6 mg/Kg).

5. National Priority List status

The Pedro Creek ODA is one of many ODAs located within the Site. The Conda/Woodall Mountain Site is not listed on the National Priorities List (NPL).

6. Maps, pictures, and other graphic representations

Refer to Figure 1 for general site location, Figure 2 for property ownership and ODA components, Figure 3 for results of samples for selenium across all media, and Figure 4 (for the selected removal action alternative.

B. Other Actions to Date

1. Previous actions

There has been one action conducted at the Pedro Creek ODA which is discussed below; however, the action was not conducted under the authority of CERCLA. In the Fall of 2010, maintenance activities were completed in accordance with the BLM Mine and Reclamation Plan and the mine's Stormwater Pollution Prevention Plan. The maintenance activities included removing and consolidating sediments from an existing sedimentation basin down-gradient of the ODA, improving ditches and piping to route runoff and precipitation around the ODA, and re-grading to better promote runoff in the upslope area. Plans relating to these maintenance activities were reviewed by DEQ and EPA prior to initiation and determined to not be

inconsistent with potential future CERCLA actions for the ODA and Pedro Creek Area. Additionally, the highly contaminated NES-5 seep was fenced by Simplot prior to 2001 to limit livestock access.

2. Current actions

An RI/FS is currently being conducted to evaluate the nature and extent of contamination resulting from mining at the entire Site. The RI and baseline risk assessment will fully determine the risks to human health and the environment for all contaminants of concern at each source and/or contaminated area. The FS will evaluate clean up alternatives for those portions of the Site where there are unacceptable risks posed by the presence of hazardous substances, pollutants, or contaminants.

C. Authorities' Roles

1. Actions to date

The EE/CA for the Pedro Creek ODA was completed pursuant to the January 18, 2008, Consent Order/Administrative Order on Consent (AOC/CO) for Performance of Remedial Investigation and Feasibility Study between DEQ, EPA, BLM, and the J.R. Simplot Company, and the December 24, 2009, Remedial Investigation/Feasibility Study Work Plan Amendment.

Under the AOC/CO, DEQ is designated as "Lead Agency" for the purpose of project management. EPA implements CERCLA at the Site. The DEQ and the EPA approved the EE/CA. BLM exercises its CERCLA authority on lands subject to BLM's jurisdiction, custody, or control.

D. Tribal response

The Shoshone-Bannock Tribes (Tribes) participate in the CERCLA process under the AOC/CO as a Support Agency. The Tribes were provided all versions of the EE/CA for review and comment. On December 9, 2010, EPA wrote a letter to the Fort Hall Tribal Business Council asking if the Tribes would like government-to-government consultation. The following week, EPA and BLM presented a summary of the alternatives evaluated and preferred alternative in the EE/CA to environmental staff working for the Tribes. The staff appeared supportive of the preferred alternative. The Tribal Business Council did not request a formal government-to-government consultation.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The current conditions at the Pedro Creek ODA meet the following factors which indicate that it is a threat to the public health or welfare or the environment and a removal action is appropriate under Section 300.415(b)(2) of the NCP. Any or all of these factors may be present at a site yet any one of these factors may determine the appropriateness of a removal action.

As indicated previously, selenium has the widest distribution and greatest exceedances of risk-based benchmarks. Between 1997 and 2003, several hundred sheep died while grazing within the Site. The livestock deaths may have been caused by selenium toxicity. Therefore, for purposes of this early action, the following subsections discuss threats to public health, welfare, and the environment from releases of selenium. The RI/FS will fully evaluate and describe risks for selenium and other COPCs.

A. Threats to Public Health or Welfare

1. Exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants (300.415[b][2][i])

Elevated concentrations of selenium are found in surface soils, surface water, alluvial groundwater, sediments, and vegetation. Surface water concentrations of selenium exceed Idaho Water Quality Standards for both acute and chronic exposures for cold water aquatic life. Fish, macroinvertebrates, and aquatic vegetation are directly exposed to water-borne COPCs. The acute criterion is an estimate of the highest concentration of contaminant in surface water to which an aquatic community can be exposed briefly without causing an adverse effect. The chronic criterion is an estimate of the highest concentration of selenium in surface water to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. Fish are the most sensitive receptors and have both aqueous and dietary exposure to selenium. Excess amounts of selenium in their diet can be toxic to the fish. This toxicity is evidenced in malformations in fry and in greater morbidity in the fry population.

In addition, selenium concentrations in shallow groundwater exceed the Idaho groundwater quality standard (IDAPA 58.01.11) and the Federal Safe Drinking Water Standards MCL.

As stated previously, a risk assessment has not yet been completed for the Site, but concentrations of selenium in site soils, sediments, and vegetation significantly exceed some of the risk-based screening-level benchmarks and therefore indicate potential for unacceptable risk to human and ecological receptors. While the magnitude of these exceedances support the need for an early action, it should be noted that the conservative benchmarks are intended for risk screening purposes only and the exposure assumptions used to develop screening benchmarks could overstate risk for receptors using the Pedro Creek area. When complete, the Site risk assessment will determine action levels of selenium and other COPCs in soils, sediments, and vegetation above which there is an unacceptable risk to receptors based on site-specific information and conditions.

Several instances of livestock mortality, which may have been caused by selenium uptake, occurred at the Conda Mine prior to 2004. The affected livestock were primarily sheep that were grazed on Woodall Mountain and in the vicinity of the former Conda Townsite. One of the livestock mortality events was in close proximity to the Pedro Creek ODA. In June 2001, between 160 and 180 sheep died while grazing on, and downslope of, ODAs at the head of Pedro Creek. Although less well documented than the sheep deaths, several horses which grazed near, and drank from, springs on the northeast side of Woodall Mountain (some specific locations unknown) during the early 1990s and in 2003 exhibited hoof soreness and/or sloughing, which is

symptomatic of acute selenium toxicity. As indicated previously, livestock grazing and watering on contaminated areas of the mine site is now restricted, both on Simplot-owned land and on BLM-administered land.

Some plant species readily absorb selenium from soils and concentrate it in their tissues. Selenium toxicity in livestock occurs when animals graze on forage containing such seleniferous plants.

Chronic oral exposure to high levels of selenium results in a number of human health effects. Symptoms of selenosis include a garlic odor on the breath, deformation and loss of nails, gastrointestinal disorders, hair loss, fatigue, irritability, and neurological damage. Nearby residents, recreationists, and/or trespassers could be exposed to elevated levels of selenium in soils on the Pedro Creek ODA and to contaminated surface water and sediments down-gradient of the ODA.

2. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate (300.415[b][2]iv)

The Pedro Creek ODA consists of overburden rock units that were excavated to allow miners access to the phosphate ore. The overburden materials, particularly the middle waste shales of the Phosphoria Formation, contain naturally elevated levels of selenium and other trace metals. Excavating, handling, and disposing of the overburden rock accelerates both the physical and chemical weathering processes, resulting in releases of selenium and other contaminants (metals) to the environment. Chemical weathering (primarily oxidation and subsequent leaching of contaminants) results when source materials containing the Meade Peak Member shales are exposed to air and infiltrating water from precipitation. Physical weathering resulting from wind and water breaks the overburden into smaller particles thereby increasing the surface area available for further oxidation and leaching. Samples of soils that developed on the ODA exceed risk-based human health and ecological screening-level benchmarks for selenium. Once these contaminants of concern (COPCs) are released through oxidation and leaching, those COPCs are transported by groundwater and surface water (through runoff and/or stream flow) or by direct plant uptake. Evidence of contaminant migration is observed in surface water samples which exceed water quality standards for selenium in Pedro Creek as far as 2.3 miles downstream of the ODA, and shallow groundwater which exceeds MCLs approximately 2200 feet down-gradient (east) of the ODA. The selenium in the soils has also been taken up by vegetation at concentrations that exceed risk-based bench marks, particularly on the ODA and in the vicinity of the NES-5 seep.

In addition to the contaminant migration through leaching and transport via groundwater and/or surface water, the steep eastern sides of the Pedro Creek ODA are unstable and subject to landslides and other downslope movement. Some waste rock is currently observed beyond the toe of the ODA, resulting from minor gravity sliding and/or erosion and transport via runoff. The potential for a large scale slope failure exists due to the steep slopes which lack structural support due to the random manner in which the waste rock was placed. A similarly constructed ODA failed to the north of the Pedro Creek ODA in the 1970s, resulting in a large landslide that moved a significant quantity of waste rock downslope. The potential for a significant slope

failure is greatest during times of high precipitation and infiltration through the ODA. The potential for continued erosion off the surface of the ODA is greatest during periods of high runoff such as a rain-on-snow event in which infiltration is minimal due to frozen ground or during intense early summer rainstorms. Some of the waste rock eroded from the ODA reaches Pedro Creek where it is transported downstream as part of the sediment load. Once this contaminated material is in the stream, it can be consumed by animals that may drink surface water and it can impact the fishery. Eroded ODA material contains elevated levels of selenium, which is harmful to livestock and potentially wildlife when they consume vegetation that has absorbed selenium from the ODA material or soils contaminated with selenium. Any or all of these transport mechanisms: gravity slides, landslides, erosion resulting from runoff, and transport as sediment in Pedro Creek has the potential to move ODA material onto adjacent private property. Some ODA rocks have been observed on private property in the typically dry upper channel of Pedro Creek.

3. Minimization or elimination of the effects of weather conditions that may cause hazardous substances, pollutants, or contaminants to migrate or to be released (300.415[b][2][v])

Seasonal weather conditions facilitate the release and migration of contaminants further from the ODA in several ways. Snow melt currently pools in large depressions on the top and upslope portions of the ODA and then infiltrates through the ODA resulting in leaching of selenium and other contaminants to shallow groundwater. Shallow groundwater within the ODA flows to the NES-5 seep and/or other discharge points in the Pedro Creek drainage down-gradient from the ODA. In general, the greater the volume of water that infiltrates through the ODA and the longer the flow path through the ODA materials, the greater the mass of selenium released. In addition, increased run-on and runoff during wetter months causes greater erosion and transport of ODA material and associated contaminants from the surface of the pile. Some of the eroded waste rock enters Pedro Creek and becomes part of the sediment load. Consequently, the highest concentrations of contaminants in Pedro Creek are typically detected during late spring when both infiltration into the ODA and runoff are highest. Furthermore, the potential for a significant slope failure is greatest during times of high precipitation and infiltration through the ODA.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from the Pedro Creek ODA are present and imminent and substantial endangerment to public health, welfare, or the environment as outlined in Section III above exists.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

The following removal action objectives (RAOs) which correspond to Section 300.415(b)(2) of the NCP have been developed for the Pedro Creek ODA:

- Stabilize the ODA from an erosion and seismic standpoint and minimize the potential for future erosion, slumping, and mass-wasting of ODA materials.

- Reduce the releases and migration of selenium and other COPCs from the ODA that currently result in exceedances of MCLs in groundwater and water quality criteria in surface water.
- Reduce releases and migration of selenium and other COPCs from the ODA that result in unacceptable risks to wildlife receptors of concern due to elevated concentrations in soils, sediment, and surface water in the Pedro Creek subbasin.
- Reduce risks to aquatic life, humans, and livestock due to exposure to selenium and other COPCs in surface water, soils, and sediments. Reduce concentrations of COPCs in alluvial groundwater which may be used for livestock watering.

Based on an analysis of the nature and extent of mine-waste contamination and on the cleanup objectives, six alternative actions were evaluated for the Pedro Creek ODA. Alternatives are summarized in Table 1.

Based on the evaluation of the alternatives against the short- and long-term aspects of three broad criteria and associated sub-criteria, and public comments, the selected alternative is Alternative 4 (In-Place Consolidation/Re-grading in Side Slope Area, Re-grading in Top Area and Upslope Area, with Soil Cover and Revegetation on the ODA).

Alternative 1 was not selected because it would not address the actual or potential imminent and substantial human health and ecological threats posed by the ODA. Alternative 2 was not selected because it would not significantly improve stability of the ODA and therefore would not fully meet that cleanup objective and it has the greatest potential for the need for additional actions. Alternative 3 was not chosen because it is not as effective as the selected alternative in reducing infiltration through the ODA, and it also has a higher potential for the need for additional actions. Alternatives 5 and 6 were not selected because they are more difficult to implement, take longer to complete, and are less cost effective than the selected alternative (entailing significantly higher costs with relatively small additional reductions in infiltration).

A. Proposed Actions

1. Proposed action description

Alternative 4 is depicted in Figure 4 and is described below:

Alternative 4 includes in-place consolidation and re-grading the existing steep slopes of the Pedro Creek ODA to between 2.5:1 to 3:1, the top area to between 5:1 to 10:1, and the upslope area to between 20:1 to 30:1. A soil cover consisting of 18 inches on the side slopes and 12 inches on the top and upslope areas will be placed over the re-graded areas. Cover materials include approximately 142,000 cubic yards (cy) of weathered Dinwoody Formation soils which would be taken from an On-Site borrow area on Simplot-owned land, approximately 2 miles south of the Pedro Creek ODA. Although plant uptake of selenium is not an RAO, the disturbed areas will be re-vegetated with non-selenium-accumulator plant species. Diversion ditches and other erosion and sedimentation controls will be installed to minimize run-on and manage runoff so that infiltration through the waste rock is reduced. A few thousand cy of rock for erosion

control would be borrowed from an On-Site Rex Chert Member outcrop on Simplot-owned land within a mile of the Pedro Creek ODA. Sampling would ensure that only non-seleniferous materials would be used to construct the cover and erosion control features.

A long term performance monitoring plan will be developed and implemented. Further, temporary fencing may be implemented to control access and allow the new vegetation to establish without livestock grazing or disturbance.

Best Management Practices

Where appropriate and practicable, greener cleanup Best Management Practices (BMPs) will be employed throughout construction for control of erosion, fugitive dust, and stormwater management, and to avoid adverse impacts on wildlife and their habitats. Greener BMPs potentially include, but are not limited to, minimizing energy consumption (e.g., using new and well-maintained equipment), minimizing generation and transport of fugitive dust (e.g., implementation of construction BMPs), minimizing waste generation through reuse (e.g., concrete and riprap) and recycling (e.g., recovery of free product), minimizing erosion and impacts to water resources (e.g., implementation of construction storm water and surface water BMPs), minimizing areas requiring activity or use limitations (e.g., source removal), minimizing unnecessary soil and habitat disturbance, and minimizing noise disturbance.

2. Contribution to remedial performance

The recommended action will improve slope stability, and reduce infiltration into and erosion from the ODA. The recommended action is intended to be consistent with potential final actions for the Site. The recommended action may be the first and only action at the Pedro Creek ODA or one of a series of actions depending on post-removal performance monitoring and information obtained through the RI/FS. The final Record of Decision for the Conda Mine will identify whether additional cleanup actions are needed to prevent, minimize, or reduce potential risks to public health or welfare or the environment through surface water, sediment, groundwater and/or vegetation. If future actions are required, the recommended removal action will likely not impede those actions based on available information.

3. Engineering Evaluation / Cost Analysis (EE/CA)

An EE/CA for this early action was prepared by Simplot and is included in the Pedro Creek ODA Early Action Administrative Record. The EE/CA compared the removal alternatives based on the rating criteria and recommended Alternative 4 as the preferred alternative. The EE/CA was provided to the public for a thirty (30) day comment period from January 10, 2011, through February 9, 2011. Six individuals and/or organizations submitted comments on the EE/CA. Responses to the public comments received are provided in the responsiveness summary attached to this action memorandum.

4. Applicable or relevant and appropriate requirements

The NCP requires that removal actions attain applicable or relevant and appropriate requirements (ARARs) under federal or state environmental or facility siting laws, to the extent practicable.

(40 CFR § 300.415[j]). In determining whether compliance with ARARs is practicable, an agency may consider the scope of the removal action. (40 CFR § 300.415[j]) The scope of the removal action proposed in this action memorandum is limited. Applicable and/or relevant and appropriate ARARs are listed in Table 7.

5. Project schedule

The start of the response action is anticipated in 2011 and the project is estimated to require 1 to 2 years to complete.

B. Estimated Costs

The net present value of the selected alternative, including 30-year Operations and Maintenance (O&M), is estimated to be \$6.9 million. Capital costs for Alternative 4 are estimated at \$6.6 million. Details on the cost estimate for the proposed action are provided in Table B-4 of the final EE/CA.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the response action should be delayed or not taken:

- Hazardous substances will remain as potential human health and ecological threats based on direct contact and ingestion pathways; and
- Hazardous substances will remain a continuing source of solid and dissolved-phase contaminants that migrate from the ODA through surface water and/or groundwater.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

The selected action will be conducted in accordance with the terms and conditions of the Settlement Agreement/CO that will be developed and executed with Simplot to implement this removal action.

IX. RECOMMENDATION

This decision document presents the selected removal action for the Pedro Creek ODA at the Conda/Woodall Mountain Mine Site, Caribou County, Idaho, consistent with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the site.

Conditions at the site are consistent with the NCP section 300.415(b)(2) criteria for a removal action and I recommend your approval for the proposed removal action. Simplot is the responsible party for this cleanup action. The DEQ, EPA, and BLM expect to negotiate a Settlement Agreement/CO for Simplot to implement this action under DEQ and EPA oversight with BLM participating as a cooperating agency to EPA. However, if Simplot is unwilling or unable to conduct the recommended removal action, and EPA must do so, the total project ceiling is estimated to be \$6.9 million.

Approval: X Disapproval: _____

Signature: 

Toni Hardesty, Director
Department of Environmental Quality

Date: 7/7/11

Approval: X Disapproval: _____

Signature: 

Daniel D. Opalski, Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10

Date: 7/5/2011

Approval: X Disapproval: _____

Signature: 

Steven Ellis, Idaho State Director
Bureau of Land Management

Date: 7/13/2011

ATTACHMENTS

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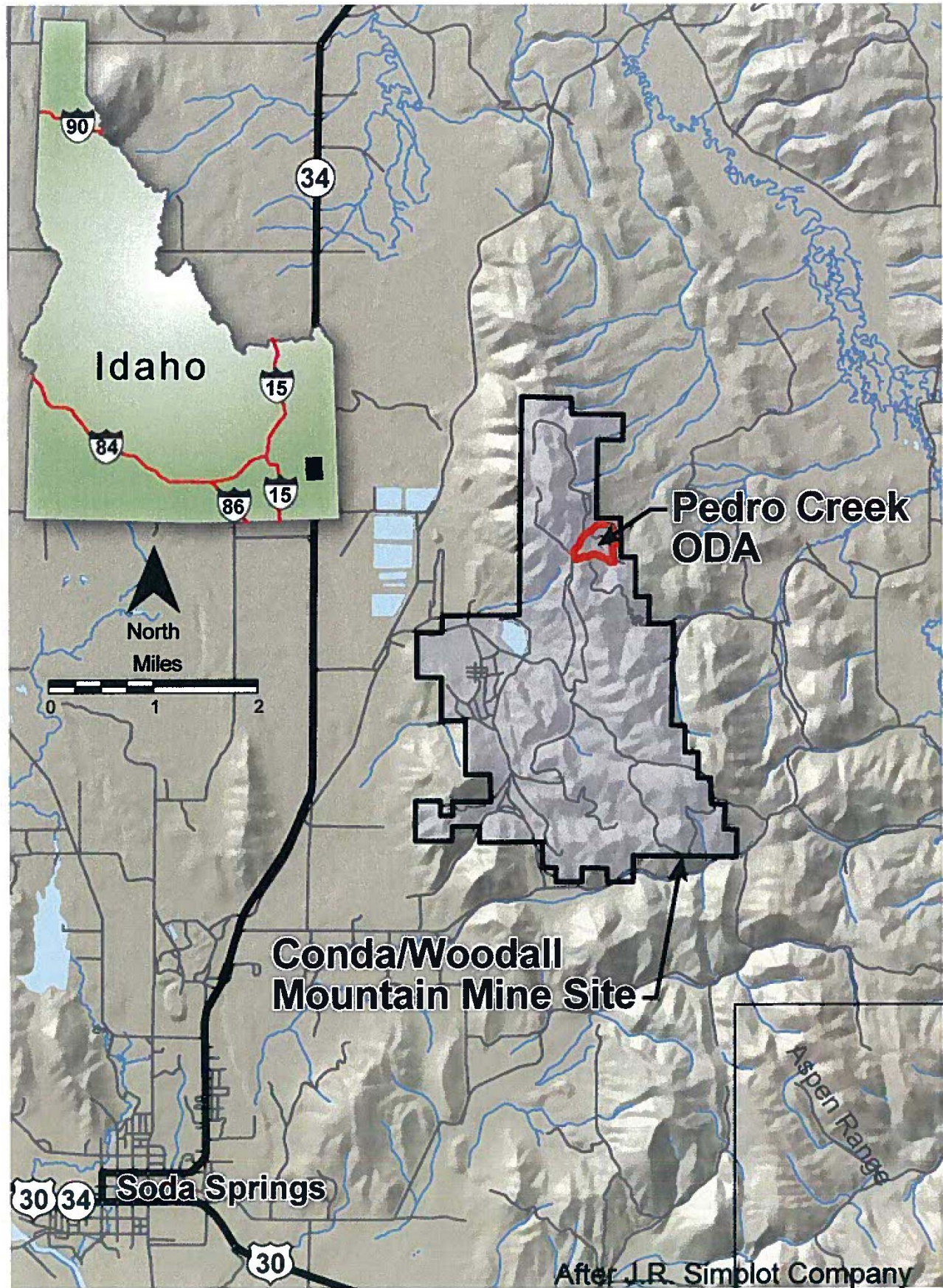


Figure 1. Location of Conda/Woodall Mountain Mine Site and Pedro Creek ODA.

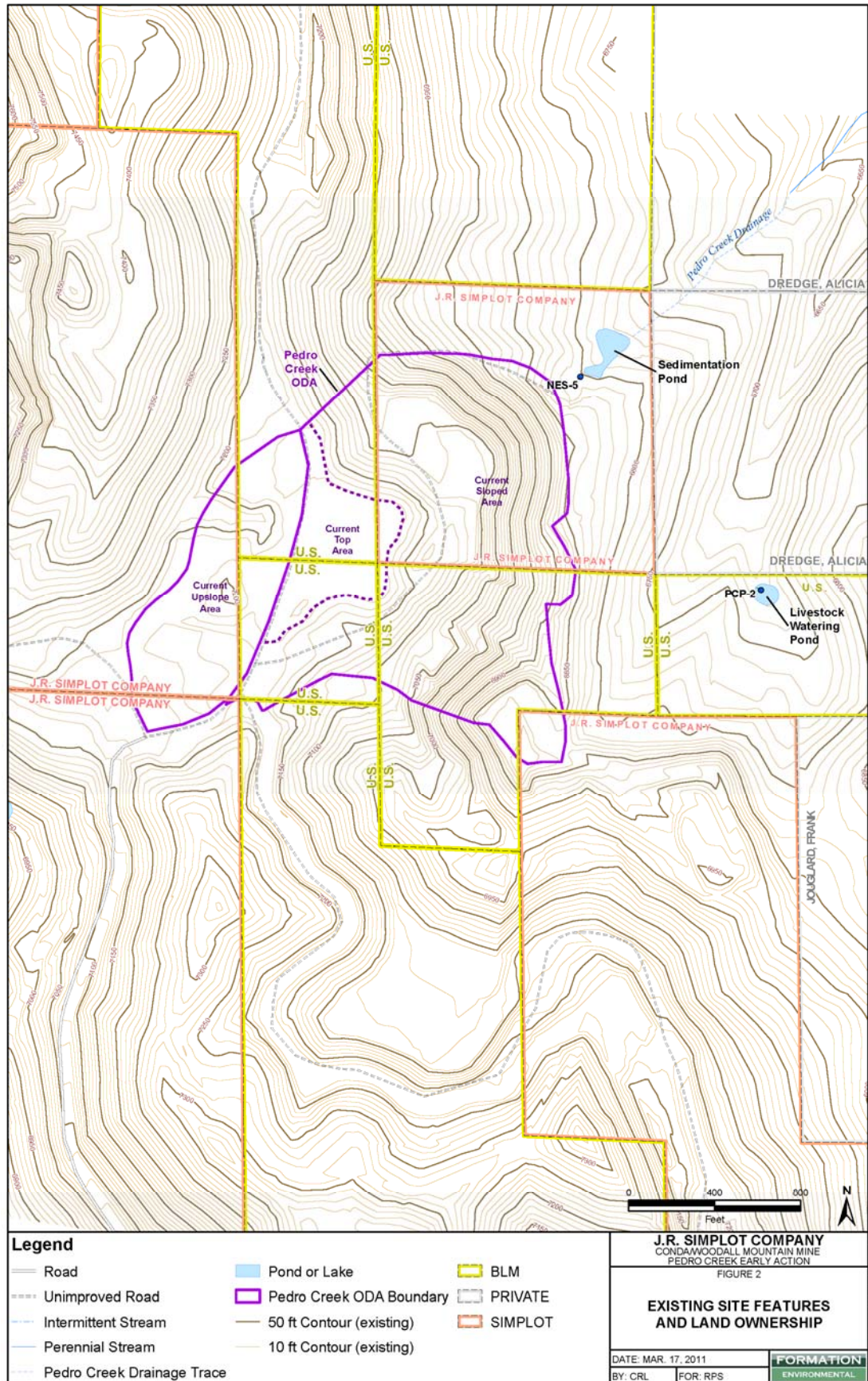


Figure 2. Site features at the Pedro Creek ODA and land ownership.

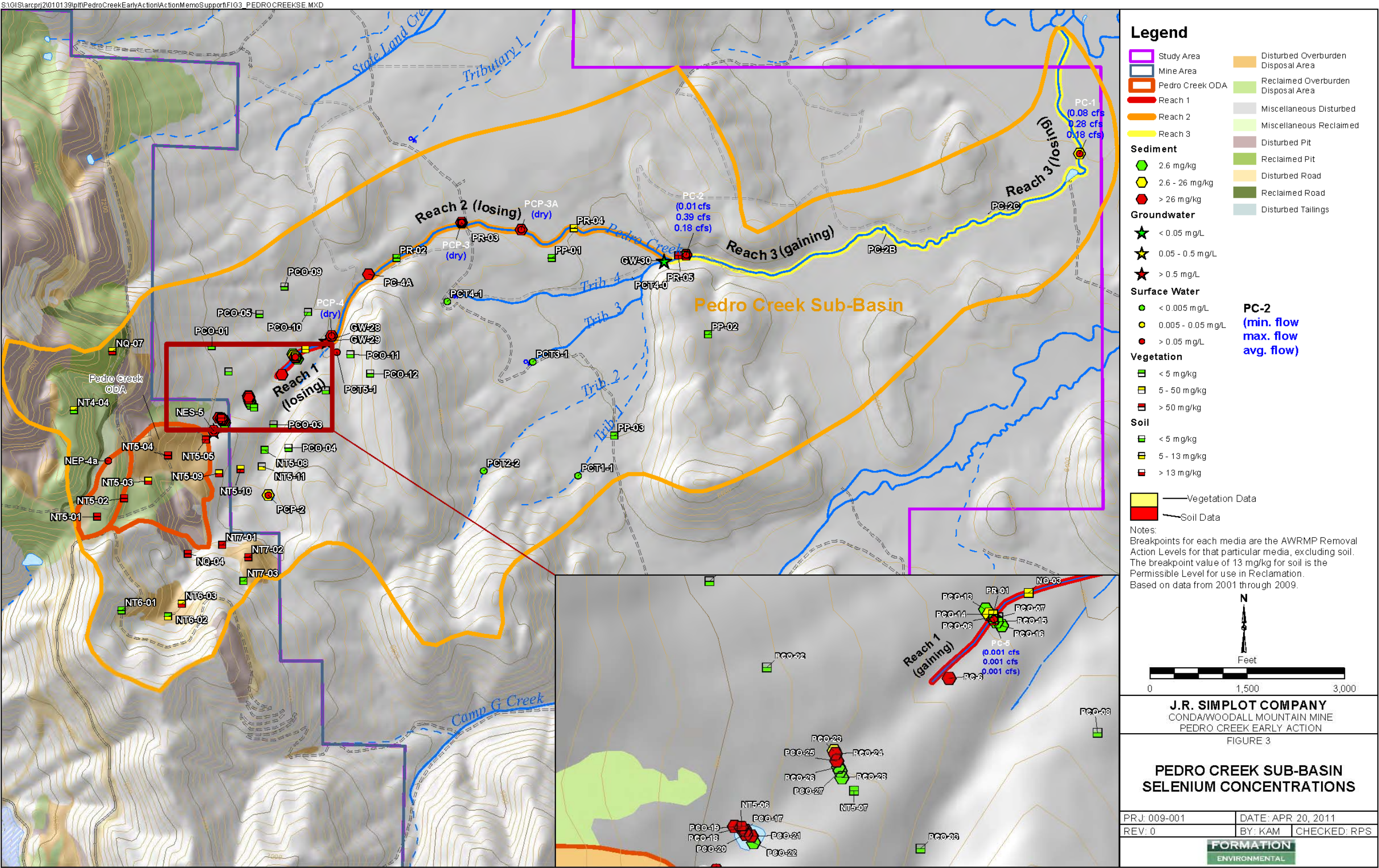


Figure 3. Selenium concentrations at and near the Pedro Creek ODA.

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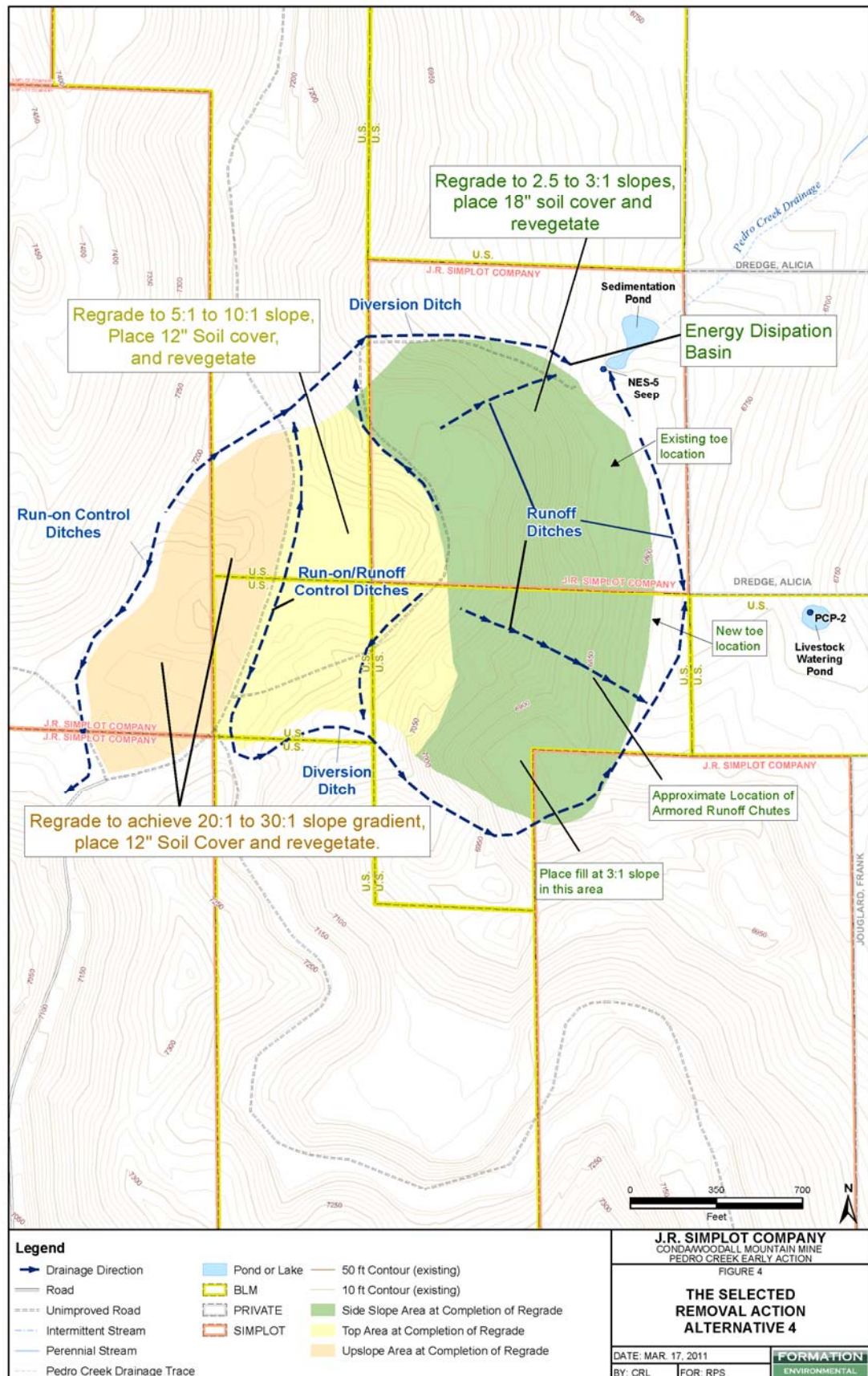


Figure 4. Site plan for the selected removal action for the Pedro Creek ODA.

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Table 1. Removal alternatives developed for the Pedro Creek ODA

Altern. No.	Alternative Description	Response Technology/ Process Action	COST (\$ Million)
1	No Action	None; the NCP requires consideration of a no-action alternative Estimated infiltration reduction through ODA = none	\$0
2	In-Place Consolidation/ Re-grading in Side Slope Area, with Direct Revegetation on Amended Overburden Materials on the ODA	Re-grade side slopes to no steeper than 2:1; re-grade upslope and top areas only where pooling occurs; amend re-graded surfaces with composted manure and re-vegetate with native non-selenium accumulator species; install run-on/runoff erosion controls. Estimated infiltration reduction through ODA = 53%	\$2.5 M
3	In-Place Consolidation/ Re-grading in Side Slope Area, with Soil Cover ¹ and Revegetation on the ODA	Re-grade side slopes to 2.5:1 to 3:1; re-grade upslope and top areas only where pooling occurs; install 6-inch thick soil cover over re-graded areas; re-vegetate with native non-selenium accumulator species; install run-on/runoff erosion controls.. Estimated infiltration reduction through ODA = 62%	\$5.3 M
4	In-Place Consolidation/ Re-grading in Side Slope Area, Re-grading in Top Area and Upslope Area, with Soil Cover and Revegetation on the ODA	Re-grade side slopes to 2.5:1 to 3:1; re-grade top area to 5:1 to 10:1; re-grade upslope area to 20:1 to 30:1; install 18-inch thick soil cover on re-graded side slopes; install 12-inch thick cover on re-graded top and upslope areas; re-vegetate with native non-selenium accumulator species; install run-on/run-off erosion controls. Estimated infiltration reduction through ODA = 85 %	\$6.9 M

¹ The soil cover would be comprised of approved Dinwoody Formation, material, to provide a low-permeability soil cover system.

Altern. No.	Alternative Description	Response Technology/ Process Action	COST (\$ Million)
5	In-Place Consolidation/Re-grading in Side Slope Area, Re-grading in Top Area and Upslope Area, with Thick Evapotranspirative (ET) Soil Cover and Revegetation on the ODA	<p>Re-grade side slopes to 2.5:1 to 3:1; re-grade top area to 5:1 to 10:1; re-grade upslope area to 20:1 to 30:1; install 51-inch thick composite ET cover system over all re-graded areas; re-vegetate with native species; install run-on/run-off erosion controls.</p> <p>Estimated infiltration reduction through ODA = 96%</p>	\$11.8 M
6	In-Place Consolidation/Re-grading in Side Slope Area, Re-grading in Top Area and Upslope Area, with Geosynthetic-Soil Cover System and Revegetation on the ODA.	<p>Re-grade side slopes to 3:1; re-grade top area to 5:1 to 10:1; re-grade upslope area to 20:1 to 30:1; install geosynthetic liner system over all re-graded areas; install 12-inch soil cover and a drainage layer over liner; revegetate with native species; install run-on/runoff erosion controls.</p> <p>Estimated infiltration reduction through ODA = 99%</p>	\$18.2 M

Table 2. Applicable or relevant and appropriate regulations (ARARs) for the Pedro Creek ODA removal action

	Standard, Limitation, or Requirement Criteria	Citation	Description	Comments	Category
Federal					
Chemical-Specific	National Primary Drinking Water Regulations	40 C.F.R. Part 141	Establishes health-based standards (Maximum Contaminant Levels, MCLs) for public water systems.	MCLs are not applicable to this removal action because the action does not involve a public water system. However, they are relevant and appropriate because the groundwater is a potential drinking water source. Because this removal action is limited in scope, the removal action objective (RAO) is to reduce contaminant concentrations in the groundwater, not to meet the MCLs. Post removal action groundwater monitoring results will be compared against the MCLs; therefore, these requirements are relevant and appropriate.	Relevant and Appropriate
	Water Quality Standards	40 C.F.R. Part 131	Sets criteria for water quality based on toxicity to aquatic organisms and human health.	Relevant and Appropriate	Relevant and Appropriate
	National Recommended Water Quality Criteria November 2002	33 U.S.C. §1314(a)	Recommended aquatic water quality criteria (AWQC) for the protection of aquatic life and human health in surface water. The National Recommended Ambient Water Quality Criteria (AWQC) are guidance established by the EPA for evaluating toxics effects on human health and aquatic organisms.	Federal Ambient Water Quality Criteria are not applicable, but would be relevant and appropriate if there is no state standard for any of the Contaminants of Potential Concern (COPC) identified in the SI/EE/CA. They would also be relevant and appropriate if there is a state standard but it is less stringent than the AWQC. The AWQC for cadmium for the chronic criterion is more stringent than the state standard based on a hardness of 100 mg/l. For all other COPCs, the AWQC and the state standard are the same.	Relevant and Appropriate
	National Pollutant Discharge Elimination System (NPDES) Permit Regulations	Clean Water Act 33 USC § 1342 and 40 CFR § 122 to 125	Permitting requirements for the discharge of "pollutants" from any "point source." EPA considers discharges from waste dumps (springs and seeps at the base of the dumps) as point sources. The NPDES regulations establish requirements for point source discharges and stormwater runoff. These regulations are applicable for any point source discharge of contaminated water, stormwater runoff at the Site, and management of stormwater runoff during construction where the construction site involves 1 acre or more.	The removal action objective (RAO) is to reduce contaminant concentrations in the groundwater and surface waters, not to meet the standards. BMPs will be in place to manage storm water runoff at the Site during implementation.	Applicable
Action-Specific	Surface Mining Control and Reclamation Act	30 U.S.C. § 1201- 1326; 30 C.F.R. Part 816.43, 45-47, and 111; 30 C.F.R. Part 784	Permanent program performance standards – surface mining activities. Minimum requirements for reclamation and operations.	Not applicable since the site is not a coal mine. However certain requirements may be relevant and appropriate to the design of the cap and run-on/run-off control systems	Relevant and Appropriate
	National Emission Standards for Hazardous Air Pollutants	40 CFR 61	Recommended air pollutant restrictions.	The State of Idaho's air quality standards govern air quality at this site. Therefore, the NESHAP requirements are relevant and appropriate.	Relevant and Appropriate
	Migratory Bird Treaty Act	16 U.S.C. §§ 703 et seq.	Taking, killing, possessing migratory game is unlawful.	The removal action is not expected to impact migratory birds protected by this act. If migratory birds are impacted during implementation, actions would be taken to meet the substantive requirements.	Applicable
	Bald and Golden Eagle Protection Act	16 U.S.C. 668-668c	Prohibits taking, killing, selling, or possessing Bald or Golden Eagles.	The removal action is not expected to impact eagles protected by this act. If eagles are impacted during implementation, actions would be taken to meet the substantive requirements.	Applicable
	Endangered Species Act	16 U.S.C. §§ 1531 et seq. 50 C.F.R. Part 402 40 C.F.R. § 6.302	Requires consultation with ESA Services charged with protecting listed species, if listed species could be impacted by the actions.	No listed species could be impacted by the project. The substantive requirements of ESA will be complied with through completion of a Determination of No Effects.	Applicable
	National Pollutant Discharge Elimination System (NPDES) Permit Regulations for Stormwater	40 CFR § 122 to 123	Regulates erosion and sediment control and stormwater management at construction sites.	The substantive requirements of a Stormwater Pollution Prevention Plan will be met through implementation of Best Management Practices to control erosion and sediments during construction.	Applicable
	Clean Air Act National Primary and Secondary Ambient Air Quality Standards (NAAQSs)	42 USC§ 7409, 40 CFR 50	Protection of the nation's air quality. Establishes air quality levels that protect public health. Concern for this removal action would be control of fugitive dust.	The State of Idaho's air quality rules govern air quality at this site. Therefore, the Clean Air Act requirements are relevant and appropriate.	Relevant and Appropriate

Table 2 (continued).

	Standard, Limitation, or Requirement Criteria	Citation	Description	Comments	Category
Federal					
Location-Specific	Archaeological and Historic Preservation Act	40 C.F.R. § 6.301	Data recovery and preservation activities.	An archeological survey will be conducted prior to construction. If archeologically important items are discovered during implementation, the substantive requirements will be followed.	Applicable
	National Historic Preservation Act	16 U.S.C. §§ 470f, 36 C.F.R. Parts 60, 63 and 800, 40 C.F.R. § 6.301	Section 106 of NHPA process balances needs of Federal undertaking with effects the undertaking may have on historic properties.	A Cultural Resource Survey will be completed prior to construction. If culturally important items or structures are discovered during implementation, the substantive requirements will be followed.	Applicable
	Protection of Wetlands	40 C.F.R. § 6.302	Wetlands Protection: Executive Order 11990 requires agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists.	Applicable if jurisdictional wetlands are impacted by the project. A wetlands delineation will be conducted as part of the design	Applicable
	Federal Land Policy and Management Act of 1976 (FLPMA)	43 USC 1701	Provides for multiple use and inventory, protection, and planning for resources on public lands.	The substantive requirements of the BLM's Land Use Plan and Resource Management Plan will be considered during the design and implementation of the removal action.	Relevant and Appropriate
State of Idaho					
Chemical-Specific	Idaho Water Quality Standards	IDAPA 58.01.02	Narrative and numerical standards that apply to all surface waters in Idaho.	The removal action objective (RAO) is to reduce contaminant concentrations in surface waters down-gradient from the site, not to meet the Idaho Water Quality Standards (IWQS). Post removal action surface water monitoring results will be compared against the IWQS. Where the IWQS are more stringent than the National AWQS, the IWQS will be applicable. The IWQS for cadmium for the acute criterion is more stringent than the AWQS based on a hardness of 100 mg/l. For all other COPCs the IWQS and the AWQS are the same.	Applicable
	Idaho Ground Water Quality Rule	IDAPA 58.01.11.200	Numerical and narrative standards that apply to all groundwater in Idaho.	The removal action objective (RAO) is to reduce contaminant concentrations in the groundwater down-gradient from the site, not to meet the Idaho Groundwater Quality Standards (IGWQS). Post removal action groundwater monitoring results will be compared against the MCLs and IGWQS.	Applicable
	Idaho Water Quality Act	Idaho Code, Title 39, Chapter 36	Procedures to preserve water quality and state authority for setting water quality standards.	The substantive requirements of this statute will be met to maintain and achieve existing and beneficial uses of surface water.	Applicable
	Rules and Standards for Hazardous Waste	IDAPA 58.01.05	Standards and procedures for managing hazardous waste.	The removal action is not expected to generate hazardous wastes. However, if any are generated through implementation, they will be managed in accordance with the substantive requirements of this rule.	Applicable
	Rules and Standards for Hazardous Waste	IDAPA 58.01.05	Standards and procedures for managing hazardous waste.	The removal action is not expected to generate hazardous wastes. However, if any are generated through implementation, they will be managed in accordance with the substantive requirements of this rule.	Applicable

Table 2 (continued).

	Standard, Limitation, or Requirement Criteria	Citation	Description	Comments	Category
State of Idaho					
Action-Specific	Solid Waste Management Rules	IDAPA 58.01.06	Establishes requirements applicable to all solid waste and solid waste management facilities.	Any solid wastes generated through implementation of the removal action will be managed in accordance with the substantive requirements of this rule.	Applicable
	Idaho Surface Mining Act	Idaho Code, Title 47, Chapter 15	Establishes procedures for reclamation and provides state authority for Idaho Surface Mining Rules.	Compliance with the substantive aspects of this statute provides for protection of public health, safety, and welfare, through measures to reclaim the surface of all the lands disturbed by implementation of the removal action, thereby conserving natural resources, aiding in the protection of wildlife, domestic animals, aquatic resources, and reducing soil erosion.	Relevant and Appropriate
	Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities	IDAPA 20.03.02.140	Procedures for mining and reclamation activities including clearing and grubbing, topsoil removal, road construction and abandonment, erosion controls, settling pond construction and maintenance, re-vegetation, and storing/handling of petroleum products and chemicals.	The substantive requirements of this rule will be met through use of Best Management Practices to protect the quality and beneficial use of Waters of the State.	Relevant and Appropriate
	Well Construction Standard Rules	IDAPA 37.03.09	Requirements for well construction and abandonment.	The substantive requirements of these rules will be complied with for construction of post removal action monitoring wells	Applicable
	Air Pollution Control Rules	IDAPA 58.01.01	These rules provide for the control of air pollution in Idaho.	The substantive requirements of these rules will be complied with through implementation of best management practices to control dust during construction.	Applicable
Location-Specific	Preservation of Historical Sites	Idaho Statutes Title 67, Chapters 46 and 41	Guidance to preserve historical, archeological, architectural, and cultural heritage.	Prior to construction, an evaluation will be done to determine if there are any historical or culturally important artifacts or structures at the site. If any culturally important artifacts or structures are encountered during implementation, the SHPO will be consulted.	Applicable

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Summary of Public Comments and Responses

This responsiveness summary addresses public comments received on the fact sheet that summarizes the cleanup plan for the Conda/Woodall Mountain Mine – Pedro Creek Overburden Disposal Area. The public comment period was held from January 10, 2011, to February 9, 2011. No public meeting was held.

Overview

The Idaho Department of Environmental Quality (IDEQ) and the U.S. Environmental Protection Agency (EPA) with the Bureau of Land Management (BLM) as a cooperating agency are together referred to as the Agencies.

The agencies issued a fact sheet describing the cleanup plan for the Pedro Creek Overburden Disposal Area (ODA) at the Conda/Woodall Mountain Mine site on January 10, 2011. This cleanup plan will be conducted as an early action (or non time-critical removal action) as part of the overall cleanup of the Conda/Woodall Mountain Mine site. The fact sheet identified a preferred alternative for the early action that included the following components:

- Consolidation and re-grading of unstable side slopes
- Re-grading of the areas on top of the ODA
- Construction and use of diversion ditches to control run-on and runoff waters in the vicinity of the ODA
- Covering of the ODA with 12 to 18 inches of clean soil
- Re-vegetation of the cover materials

The Agencies received written comments from seven individuals and/or organizations during the public comment period. The comments and responses are provided below. In some cases, portions of the public comments have been consolidated or edited for clarity. Complete copies of the public comments are included in the Administrative Record.

Comments from Greater Yellowstone Coalition (GYC)

GYC Comment 1: *GYC does not have in-house expertise to review/analyze most of the site characterization information provided in the Engineering Evaluation/Cost Analysis (EE/CA). It is even less likely that other members of the public have the ability to do so. We believe there are two relatively easy changes to this and other CERCLA processes that would allow us and other members of the public to provide more substantive comments. First, given that the agencies and company have had years to develop cleanup proposals, the public should be given more than 30 days within which to comment. For example, had we had more time we could retain one or more consultants to assist us in better understanding the proposals and perhaps point out areas for improvement in this and other proposals. Second, primary source material referenced in EE/CA's and RI/FS's should be readily available (digitally) for reviewers. Two examples for this EE/CA are the 2009 Evaluation of Groundwater Monitoring Network East Side of Woodall Mountain and the 2010 Geotechnical Sampling and Analysis Work Plan Pedro Creek Overburden Disposal Area. We suggest that the comment period for this and future public comment periods be extended to 90 days.*

Response 1: We understand that the volume of information in an Administrative Record is large, and as a result, can be time consuming to review. Documents within the administrative record are provided electronically and any other documents can be provided electronically upon request. Mr. Hoyt from GYC informed EPA in a phone conversation that because of their inability to hire a contractor at that time that an extension to the public comment period would not be useful. Upon request EPA and IDEQ can provide GYC and any other interested citizen with deliverables (for example, Risk Assessment report, Remedial Investigation Report) as they are finalized throughout the RI/FS process. In addition, we can provide GYC and other interested parties advance notice of when a public comment period will begin for future decisions so that GYC will have sufficient time to retain a contractor.

GYC Comment 2: *Since effectiveness and cost are both considered for the Pedro Creek and other removal actions, we believe this proposal would benefit from a more in-depth assessment of the failure of Alternative 4 to attain the projected 85 percent abatement of selenium released to ground and surface waters, and what the higher costs would be to address such a failure, whether as another stand-alone removal action or incorporated in the future remedies identified in the on-going RI/FS. For example recently permitted and proposed mine/mine expansions have rejected capping designs similar to or even more robust than that proposed in Alternative 4, and instead have adopted much more robust caps. As examples:*

- *The cover design for the 2000 Dry Valley Mine South Extension required a minimum cap thickness of two feet.*
- *The cover design for the North Rasmussen Ridge Mine would be “two to three feet” of growth medium over 8 to 10 feet of chert.*
- *The cover design for the Smoky Canyon Mine Panels F & G Expansion is an engineered store and release cover system at least six feet in thickness.*
- *The proposed cap for Monsanto’s Blackfoot Bridge Mine includes a geosynthetic liner over all of the seleniferous waste material.*

In all cases these caps were adopted because cap designs similar to Alternative 4 were determined to be inadequate in preventing selenium being leached from dumps and pit backfill. And in those other cases the caps were to be installed over “designed” disposal sites rather than a dump such as the Pedro Creek ODA which is a result of nothing more than dumping unconsolidated material over an embankment and letting gravity do the rest.

Response 2: The early action is not expected to fail, although it may be necessary to augment it with additional remedial actions as part of the final cleanup decision for the Conda/Woodall Mountain Mine site to address residual contaminant releases after the early action source control measures are in place as described below.

The Agencies weighed a number of factors in the selection of Alternative 4 as the preferred alternative. These included:

Effectiveness—Effectiveness evaluations are done to determine how effective an alternative will be at meeting the removal action objectives (RAOs). The action alternatives evaluated in the

EE/CA are considered to be “source control” alternatives. The primary objectives for this action are to stabilize the ODA in order to reduce erosion and the risk of slope failure, and to reduce (not eliminate) the quantity of infiltration that percolates through the ODA. None of the alternatives evaluated for the Pedro Creek ODA are projected to be able to meet down-gradient water quality goals in and of themselves because of the high concentrations of selenium in the down-gradient groundwater and surface water. It would require greater than 99 percent load reduction to achieve the selenium water quality goals in the groundwater and surface water. The load-reduction effectiveness of any of the alternatives will be somewhat less than the infiltration-reduction effectiveness because there will still be some groundwater flowing through the ODA from up-gradient sources. Thus, even the most effective alternative (Alternative 6 is estimated to reduce infiltration by 99 percent) is not likely to be able to meet down-gradient water quality goals. This means that additional actions will need to be evaluated in the Feasibility Study (FS) to address the residual loads remaining after the early actions.

Cover—The Agencies are aware of the cover designs that have been implemented or proposed for the operating (or proposed) mines and mine expansions in the Southeast Idaho phosphate mining area. As the commenter pointed out, there are several different types of covers that have been used at operating/proposed mines. This variability is likely based on site-specific conditions. The objective of the cover for this early action is to reduce infiltration with the objective of stabilizing the ODA. As part of the RI/FS, the cover will be evaluated to determine if it is adequate or needs to be augmented to address the remedial action objectives for the final remedy based on site-specific conditions.

In addition, the Pedro Creek ODA is located within the Conda/Woodall Mountain Mine site, which is no longer an operating mine. Cover materials that are readily available at an operating mine are not readily available at the Conda/Woodall Mountain Mine site. In fact, it would require approximately 142,000 cubic yards (CY) of cover soils to construct the cover for Alternative 4. If Alternative 5 were to be implemented, it would require approximately 480,000 CY of cover soils. These cover soils would have to be borrowed (essentially mined) from other areas at the site and hauled to the Pedro Creek ODA. The excavation, hauling, and reclaiming of the borrow area(s) would result in significant environmental impacts as well as substantially greater costs.

Cost Effectiveness—Given the factors noted above, it was necessary for the Agencies to weigh the effectiveness of the alternatives against the considerable cost for the various covers (both in terms of dollars and environmental impacts). Specifically, when comparing Alternative 4 against Alternatives 5 and 6, the Agencies determined that the greater effectiveness in infiltration reduction of Alternatives 5 and 6 did not outweigh the significantly greater cost given that all alternatives are likely to require the same follow-up remedial actions to address contaminated groundwater. Neither the extra depth of cover of Alternative 5 nor the geomembrane liner of Alternative 6 will offer greater overall protectiveness than Alternative 4 because none of these alternatives evaluated for the Pedro Creek ODA are projected to be able to meet down-gradient water quality goals in and of themselves. The Agencies prepared the cost effectiveness evaluation included in the EE/CA (which is summarized in Table ES-1 of the EE/CA). This evaluation concluded that Alternative 4 was the most cost-effective of the alternatives that met all of the removal action objectives.

Potential Future Actions--The Agencies also considered the alternatives in light of potential costs for future actions that might be required at the Pedro Creek ODA versus the costs for the various alternatives. As noted above, the FS will likely include an evaluation of alternatives for addressing residual contaminant loads being released into surface water and groundwater from the ODA. One of the alternatives that would likely be evaluated is collection and treatment of groundwater and/or surface water down-gradient from the ODA. Of the potential future alternatives that will be evaluated as part of the FS for surface water and groundwater, collection and treatment would likely be the most costly alternative evaluated. Therefore, the Agencies considered the potential difference in the future costs of collection and treatment of shallow groundwater/surface water among Alternatives 4, 5, and 6 against the cost of implementing those alternatives as part of the early actions. The cost of future treatment for Alternative 4 would be greater than the cost of treatment for Alternatives 5 and 6, because the residual groundwater/surface water flows would be greater for Alternative 4 than for Alternatives 5 and 6 (due to the greater infiltration reduction of Alternatives 5 and 6). It is not possible to accurately estimate the cost of potential future treatment for any of alternatives because the flow rates of residual groundwater/surface waters cannot be determined at the present time. However, it is likely that the difference in cost of future treatment between Alternatives 4 and 5 would be less than the \$4.9 million difference in initial cost between Alternatives 4 and 5 (\$6.9 million vs. \$11.8 million on a present worth basis). Similarly, it is likely that the difference in cost of future treatment between Alternatives 4 and 6 would be substantially less than the \$11.3 million difference in initial cost between Alternatives 4 and 6 (\$6.9 million vs. \$18.2 million on a present worth basis).

GYC Comment 3: *We believe that the agencies have erred in assuming a simple cap, as proposed in Alt. 4, placed over an unconsolidated and relatively unstable (even with re-grading the dump will remain somewhat unstable given the possibility of seismic activity in the area) pile of waste material will provide an 85 percent reduction in selenium releases. Meteoric water will continue to fall upon and leach through the dump regardless of run-on controls and the re-grading of the areas where pooling occurs on the top of the dump. In the case of the Smoky Canyon Mine expansion meteoric water was the biggest concern. Why would this site be different?*

Response 3: As part of the final design of the re-graded slopes, a seismic stability analysis will be conducted to determine the maximum earthquake that the re-graded slopes could withstand without significant failure. Although the detailed seismic stability analysis has not been conducted for the alternatives, re-grading of the ODA for Alternatives 3-6 would substantially improve the geotechnical stability over current conditions. While it would be desirable to provide even flatter slopes than those proposed for Alternatives 3-6, the space available for re-grading toward the east is limited because of adjacent private property. However, should the results of the seismic analysis indicate that flatter slopes than those proposed for the selected alternative are required, the grading plan will be revised.

The Agencies agree that meteoric water falling on and percolating through the Pedro Creek ODA is one of the largest concerns for this site. That is why reducing the volume of meteoric water infiltrating through the ODA is one of the primary removal action objectives. While it is not

possible to eliminate all of the meteoric water that infiltrates through the ODA under any of the alternatives, the proposed re-grading to eliminate areas that pool at the top of the ODA, and re-routing runoff and run-on water around the ODA will substantially reduce the volume of precipitation that infiltrates through the waste rock.

Therefore, the Agencies have weighed the costs and benefits of the projected infiltration reduction for all of the alternatives. As noted in the response to GYC's Comment 2 above, that evaluation indicated that Alternative 4 would meet the removal action objectives and is the most cost effective alternative in achieving infiltration reduction.

GYC Comment 4: *Given the ineffectiveness of cover designs, such as that contained in Alternative 4, the risk of short and long term failure seems quite high. The EE/CA should have included a disclosure of the costs associated with the likely failure. Those costs should include the loss, and need for replacement, of virtually all the topsoil, since it could well be unusable in the future due to contamination by Se and/or the inability to salvage a significant quantity from the site if the cap proves ineffective.*

Response 4: The Agencies do not expect the early action to fail, although it may be necessary to augment it with additional actions as part of the final cleanup decision for the Conda/Woodall Mine to address residual contaminant releases after the early action source control measures are in place. This early action addresses imminent instability concerns and infiltration at the Pedro Creek ODA while the remainder of the site is evaluated in the RI/FS. The Agencies recognize that additional actions may be required at the Pedro Creek ODA, particularly to address residual down-gradient groundwater and surface water contamination as well as selenium uptake into vegetation. These additional actions will be evaluated in the FS.

The Agencies considered the possibility that plants grown on the cover might grow through the clean cover soils to the ODA materials and uptake selenium. Therefore, Alternative 4 cover vegetation will include plant species that have low rates of selenium accumulation. In addition, Alternative 4 will include maintenance actions (primarily spraying with broad-leaf herbicides) in the future to control the selenium hyper-accumulator plant species. However, it can be reasonably assumed that the uptake rate of selenium and other contaminants in the soils is much slower than the uptake rate in the plants themselves. The Agencies will prepare a remedial action objectives and preliminary remedial action goals memorandum (RAO/PRGs) after completion of the Risk Assessment. The PRGs are the cleanup levels for selenium in plants and soils based on site-specific information and conditions. As part of the monitoring of the effectiveness of the early actions during the RI/FS, selenium concentrations will be measured in the cover soils as well as the vegetation planted on top of the Pedro Creek ODA cover and these values will be compared to the site-specific cleanup levels established by the Agencies. Based upon this comparison and the results of plant uptake studies that will be conducted as part of the remedial investigation, the Agencies will determine whether the Pedro Creek ODA is sufficiently protective of the plant uptake and soil ingestion pathways. If necessary, additional measures to address these pathways will be evaluated in the FS. Additional cover soils may be used to augment the Early Action cover at the Pedro Creek ODA. Even if some uptake of selenium occurs in the cover vegetation, the plant material would most likely not move enough selenium to significantly contaminate the cover soil to the point that it would be unusable as a potential

component of a future thicker cover. Thus, the risk of short or long term “failure” of the cover under Alternative 4 is considered minimal and manageable.

GYC Comment 5: *We do agree that the use of a geosynthetic liner or combination of liners as described in Alt. 6 should be rejected, not because of the cost of attaining the projected 3 percent increase in protection, but because it has not been demonstrated that geosynthetic liners can be installed without breaching on unstable and steep slopes such as those that are, and will be, present at the Pedro Creek dump site.*

Response 5: The Agencies appreciate the concern raised by the GYC. While it is true that special care must be taken in the design and construction of a geosynthetic liner on these slopes, there are multiple successful installations of geosynthetic liners on slopes as steep as 3H:1V at a number of other facilities within the United States and around the world.

GYC Comment 6: *We strongly urge the agencies to select Alternative 5 and reject Alternative 4, since Alternative 6 incorporates a cap design that, while it may not work, is in line with the bare minimum standards that the permitting agencies allow for reclamation purposes at new mines.*

Response 6: The Agencies appreciate the comments and concerns of the Greater Yellowstone Coalition and have considered those comments and concerns in the selection of the removal action alternative for the early action for source control at the Pedro Creek ODA.

Comments from the Idaho Conservation League (ICL)

ICL Comment 1: *Upon review of the Final Engineering Evaluation / Cost Analysis (EE/CA) developed for the cleanup at the Pedro Creek Overburden Disposal Area (ODA) we have concluded that we are not supportive of the agencies’ proposed alternative (#4). The agencies’ preferred alternative is not sufficiently protective of human health and the environment, fails to adequately reduce water infiltration and does not convey protection from selenium uptake by plants in a manner that is a long-term solution for this site. From our perspective, the chosen alternative must: 1) be sufficiently protective of human health and the environment, and 2) credibly stand on its own as a possible permanent solution in the event that the RI/FS for the Conda site as a whole does not recommend additional measures at the Pedro Creek ODA. Upon review, we have concluded that only alternatives #5 and #6 are likely to meet the above stated concerns of protectiveness and durability/permanence.*

Response 1: The early action is a source control action to reduce erosion and the risk of slope failure and to reduce (not eliminate) the quantity of infiltration that percolates through the ODA. The Agencies evaluated all of the alternatives in terms of protection of human health and the environment, compliance with all Federal and State ARARs, effectiveness, implementability, and costs. This evaluation resulted in the following conclusions:

With the exception of Alternative 2, all of the action alternatives would improve stability and reduce erosion from the Pedro Creek ODA. Alternatives 3 through 6 are expected to achieve comparable stability improvement and erosion reduction.

All of the action alternatives would reduce infiltration of precipitation through the ODA, which would reduce the contaminant loads in groundwater and surface water down-gradient from the ODA. While Alternatives 5 and 6 would reduce infiltration more than Alternative 4 (or Alternatives 2 and 3), none of the alternatives are likely to result in sufficient load reductions such that water quality goals down-gradient from the ODA can be met (see discussion below in the response to ICL Comment 2). Therefore, additional measures (for example, collection and treatment) will likely be evaluated and implemented through the RI/FS process to address the residual loads, regardless of alternative chosen for the early actions. Assuming that the additional measures are properly constructed and maintained, they can be effective at addressing the residual loads; therefore, all of the action alternatives can be considered protective of the down-gradient water quality.

Although reduction in selenium uptake in plants was not a specific goal of the early actions, selenium uptake by the vegetation planted on top of the cover soils was considered. Selenium plant uptake was not a goal of the early action because additional data and evaluations need to be performed as part of the RI/FS process. Alternatives 5 and 6 would have a lower risk of contamination of the cover vegetation than Alternatives 2 through 4. To address this concern, Simplot has proposed planting of grass species that have been shown to have low rates of selenium uptake. Simplot has also proposed controlling the potential future invasion of plants with high selenium uptake rates through the use of broad leaf herbicides as part of regular maintenance procedures. As part of the monitoring of the effectiveness of the early actions, selenium concentrations will be measured in the cover soils as well as the vegetation planted on top of the Pedro Creek ODA cover and these values will be compared to the site-specific action levels established by the RAO/PRG memorandum. Based upon this comparison and the results of plant uptake studies that will be conducted as part of the remedial investigation, the Agencies will determine whether the Pedro Creek ODA is sufficiently protective of the plant uptake and soil ingestion pathways. If necessary, additional measures to address these pathways will be evaluated in the FS.

The Pedro Creek ODA early action will be evaluated in the RI/FS to determine if additional measures are needed to fully address all exposure pathways and implemented as part of future remedial actions.

ICL Comment 2: *Alternatives #5 and #6 result in substantially greater reductions in water infiltration than the agencies' preferred alternative (#4). This translates to superior performance in terms of reducing mobilization of the contaminants of potential concern (COPC) and COPC delivery to groundwater and surface water. The overriding rationale for the selenium related cleanups in the phosphate mining area is to reduce the amount of selenium reaching groundwater and surface water. DEQ and EPA need to do all that can be done to ensure that each individual project reduces its contribution to the selenium problem to the maximum extent possible. Failure to do so at each individual project runs the risk of failing to achieve regional cleanup goals as a whole.*

Response 2: CERCLA requires that early actions be protective of human health and the environment. The Agencies agree that one of the overriding objectives for any cleanup of the

phosphate mines is the reduction of COPC loads (particularly selenium loads) such that groundwater and surface water goals can be met down-gradient from the mine sites. One of the primary objectives of the early actions at the Pedro Creek ODA is to reduce the infiltration through the ODA, which in turn, will reduce the concentrations of COPCs in the groundwater and surface water along Pedro Creek down-gradient from the ODA. However, meeting groundwater and surface water quality standards down-gradient from the ODA is not a removal action objective for the early action. None of the alternatives evaluated for the Pedro Creek ODA are projected to be able to meet down-gradient water quality goals in and of themselves. Achieving selenium water quality goals in the groundwater and surface water would require greater than 99 percent load reduction through source. The load-reduction effectiveness of any of the alternatives will be less than the infiltration-reduction effectiveness because it is not possible to prevent some groundwater flowing through the ODA from up-gradient sources. Thus, even the most effective alternative for reducing infiltration (Alternative 6 is estimated to reduce infiltration by 99 percent) is not likely to be able to meet down-gradient water quality goals. Therefore, additional actions (including the possibility of collection and treatment of groundwater and/or surface water) will be evaluated in the Feasibility Study (FS) to address the residual loads remaining after the early actions.

The combination of the Pedro Creek early action and any additional measures selected in the final Record of Decision for the Site will fully address compliance with the groundwater and surface water standards down-gradient from the Pedro Creek ODA. This phased approach is commonly used at CERCLA sites when it is impossible to determine the effectiveness of the primary source control actions before they are implemented. Through experience at other sites, the Agencies have determined that the phased approach can result in much more effective and cost-effective solutions. The typical steps in the phased approach include: 1) evaluate and select source control alternative(s); 2) implement the selective source control action; 3) monitor the effectiveness of the source control action(s); 4) evaluate alternatives to address residual loads; and 5) implement actions to address the residual loads as part of the final remedial action.

ICL Comment 3: *Quite frankly, neither DEQ nor EPA have articulated a coherent grand strategy to restore the contaminated waters in this area. Nor have the agencies articulated how piecemeal reductions at the various selenium sources in the region will result in sufficient reduction of selenium to bring these waters as a whole back into compliance with the applicable standards. Thus, without knowing what levels of reduction DEQ/EPA will achieve at the other sites, DEQ/EPA needs to ensure that the maximum reduction possible is achieved at each site. Alternatives #5 or #6 are the only alternatives that achieve the needed reductions in infiltration.*

Response 3: The Agencies appreciate the concerns regarding a comprehensive strategy to address contaminated waters within the area. The Agencies involved at the various sites within the phosphate patch are working toward selecting cleanup actions that will collectively achieve compliance with the Clean Water Act in the connected watersheds. Developing a comprehensive strategy to bring the Blackfoot River back into compliance with all Clean Water Act requirements is beyond the individual scope of the Conda/Woodall Mine CERCLA action, although the proposed early action is expected to improve surface water quality in Pedro Creek which ultimately drains into the Blackfoot River.

Regarding the Conda/Woodall Mountain Mine site, the commenter is correct that there is not yet a comprehensive CERCLA remedy that addresses the Site's groundwater and surface water. The proposed removal action is an early action source control measure that focuses on the Pedro Creek ODA because it is unstable and releases high concentrations of contaminants to surface water, sediments, and shallow groundwater that have migrated onto down-gradient properties. The proposed source control action in combination with future CERCLA response actions in the final Record of Decision will fully address all exposure pathways and compliance with all applicable or relevant and appropriate standards. The remedial investigation/feasibility study is still being prepared to evaluate the nature and extent of contamination, evaluate site risks, and develop remedial action alternatives that fully address all exposure pathways. See ICL Comment Response # 2 regarding the concern that the removal action require the maximum possible reduction in infiltration.

ICL Comment 4: *Alternative #4 is not a reasonable long-term solution because the thinness of the soil cap means that the area is not suitable for colonization by selenium accumulating vegetation. Presuming that only vegetation that does not accumulate selenium will grow on this site is not realistic. Alternatives #5 and #6 have capping sufficient to protect terrestrial animal health from harmful impacts of eating selenium contaminated vegetation into the future. As a result, only these two options are viable.*

Response 4: Alternative 4 does not presume that selenium non-accumulator species will colonize the cover soils following construction. The cover would be designed and planted with a mix of grasses that have been shown to have very low selenium accumulation rates. To maintain the desired mix of vegetation, the maintenance procedures may include regular applications of broad-leaf herbicides to keep the selenium accumulators from colonizing the cover soils (the selenium accumulator species are all broad-leaf species). It is possible that the grasses planted on the Early Action cover will not accumulate sufficient concentrations of selenium to pose a risk to wildlife and livestock. The risk assessments have not yet been completed at the Conda site, therefore, the concentrations in vegetation that would pose a risk to wildlife or livestock are not yet known. Once the risk concentration is determined, the Agencies will be able to set action levels for vegetation. In addition, site-specific plant uptake studies will be completed pursuant to the RI/FS and will help define the appropriate cover thickness and grass varieties for ODA covers. As part of the monitoring of the effectiveness of the early actions, selenium concentrations will be measured in the cover soils as well as the vegetation planted on top of the Pedro Creek ODA cover and these values will be compared to the site-specific action levels established by the risk assessment. Based upon this comparison and the results of plant uptake studies, the Agencies will determine whether the Pedro Creek ODA is sufficiently protective of the plant uptake and soil ingestion pathways. If necessary, additional measures to address these pathways will be evaluated in the FS.

ICL Comment 5: *Current mining and reclamation practices utilized in the phosphate area require waste segregation and encapsulation, compaction, lining, drainage under waste piles and careful grading and capping of the surface. Additionally, creek and valley fills are not allowed. Nearly all of these current practices were violated during the placement of waste at the Pedro Creek ODA. Obviously the cleanup plan for Pedro Creek is in reaction to the current conditions at site. The plan's intent is not to transform this old site into a 'state of the art'*

modern overburden pile – doing so would require moving all of the waste out of the creek bed and (somehow) sorting it and entombing the selenium-bearing waste within the non-selenium bearing wastes. Clearly this is not being proposed. So, given that the site's underlying failures (location and non-sorted, non-encapsulated waste) are not actually going to be addressed, it strikes us as imperative the agencies at least require that the capping operation be done to current standards. In reality, neither DEQ nor EPA would allow a new mine to be permitted with a valley fill pile of non-sorted, non-encapsulated selenium-bearing waste. However, if for some reason you did (hypothetically), you would require a very significant capping operation. This is the situation that you find yourselves in – and the only rational choice is to select the alternative with the most protective cap possible because the cap is the only environmental control mechanism at your disposal to remedy this site. Thus, it is incumbent upon the agencies to select an alternative that provides the maximum level of control at this site.

Response 5: The Agencies agree that, if the Conda/Woodall Mountain mine were active, the placement of the wastes and the containment/reclamation of those wastes would be significantly different than under the current conditions. However, the Agencies have to deal with the conditions as they exist at this inactive mine site. For the Pedro Creek ODA, it would require approximately 142,000 cubic yards (CY) of cover soils to construct the cover for Alternative 4. If Alternative 5 were to be implemented, it would require approximately 480,000 CY of cover soils. These are significant quantities of materials to be generated. At the active mine sites, materials suitable for a cover are being generated on a continual basis, therefore obtaining materials for the covers is a matter of segregating and appropriate materials handling. However, at an inactive mine site such as Conda, the cover soils would have to be borrowed (essentially mined) from other areas at the site (or from off-site borrow sources) and hauled to the Pedro Creek ODA. Therefore, Alternative 4 is the preferred alternative because it is essentially equivalent to Alternatives 5 and 6 in terms of protectiveness, while resulting in significantly lower impacts to the environment during implementation. Neither the extra depth of cover of Alternative 5 nor the geomembrane liner of Alternative 6 will offer greater overall protectiveness than Alternative 4. None of these alternatives evaluated for the Pedro Creek ODA are projected to be able to meet down-gradient water quality goals in and of themselves. As previously discussed in response to several comments, the cover in Alternative 4 meets the removal action objectives for this source control early action. The FS will evaluate more robust covers if necessary to meet remedial action objectives and cleanup levels.

ICL Comment 6: *The support materials for this cleanup plan fail to provide sufficient information about the projected outcomes associated with the various alternatives. There is little to no information about anticipated reductions in the migration of contaminants through the pile and contamination of groundwater and/or surface water. The report states that the actions will have projected impacts on water infiltration rates – but does not speculate on how this will translate into reduction in contaminant flow. As a result, it is not possible to quantifiably differentiate between Alternative #5 or #6.*

Response 6: While it is possible to quantitatively model the infiltration reduction through the ODA, it is not possible to quantitatively determine or model the reduction in COPC loads emanating from the ODA following implementation of any of the alternatives. There are many uncertainties associated with predicting load reductions. These uncertainties include:

- Uncertainties associated with the actual infiltration reduction predictions. The HELP model used for estimating the infiltration reductions uses a number of inputs and assumptions that are estimates or are standard (default) inputs. In addition, the model, of necessity, must use an averaging procedure that does not take into account annual and seasonal variability in meteorology.
- The HELP model provides predictions of the reductions of incident precipitation only. The reduction of infiltration through the ODA as a result of run-on controls is much less certain and depends on the effectiveness of the run-on control ditches at intercepting overland flows under highly variable conditions.
- Even if the effectiveness of the cover and run-on controls could be accurately estimated, there is uncertainty in the quantity of groundwater actually moving through the ODA. None of the alternatives address localized groundwater that flows through the ODA from up-gradient sources.
- There are significant uncertainties regarding the potential effects of preferential flow paths through the ODA above the water table. The presence of the preferential flow paths limits the percentage of ODA material in contact with infiltrating precipitation and thus subject to leaching of contaminants. The existence of the preferential flowpaths, and the volume of waste rock subject to leaching along the flowpaths depend in part on grain size and the extent that the ODA materials are locally compacted. It is very difficult to predict these properties throughout the ODA materials.
- The COPC load reductions for any of the alternatives cannot be predicted based on infiltration and run-on reductions. The COPC load reductions also depend on complex geochemical interactions within the ODA that can significantly alter the quantities of the COPCs that emanate from the ODA. In addition, as infiltration is reduced, the concentrations of COPCs within the ODA generally increase due to less available water to dilute the COPCs. Therefore, the load reductions following implementation of any of the cover alternatives will likely be a lesser percentage than the infiltration reduction predictions.

Because of these uncertainties, the flows, COPC concentrations, and loads down-gradient from the ODA following the early action cannot be quantitatively estimated. However, as noted in the response to ICL Comment 2 above, it is highly unlikely that the groundwater or surface water standards down-gradient from the ODA could be met with any of the cover alternatives in and of themselves. Therefore, the Agencies will be monitoring the groundwater and surface water data following implementation of the early actions to better define what additional measures should be evaluated in the FS to meet the down-gradient water quality standards.

ICL Comment 7: *The long-term positive impacts of Alternative #6 are likely to decrease over time as the membrane material eventually fails. The much thicker soil cap in Alternative #5 is likely to stand up better through time; perhaps making this a better selection.*

Response 7: The currently available geomembranes manufactured from materials such as high density polyethylene (HDPE) are essentially inert and have a long but unspecified lifespan that depends on site-specific conditions. Most failures of geomembranes at other sites have resulted from improper design and/or construction, or exposure to ultraviolet rays from the sun. The geomembrane for Alternative 6 would be covered with soil, therefore ultraviolet degradation is not an issue. As long as the geomembrane is properly designed and constructed, the risk of long-term failure is minimized.

Comments from Planetary Solutionaries (PS)

PS Comment 1: *Although difficult, it is conceivable that under some interpretation of “bureaucratize” that the definition of “cleanup” as in the Pedro Creek ODA “Cleanup Plan” could be construed as a “cleanup action”; however, it would appear more accurate to describe it as a “stabilizing action”, which appears to have some semblance of containment, and on the far-flung margins the potential of a uncertain, yet-to-be-proven remediation component. However, to identify it as an “early action” is without question, perplexing, disconcerting, and alarming. On the face of it, it is somewhat disingenuous for the government to refer to the action as a “cleanup”, because by its own admission, the “plan” is more about a “cover up”; as described in Alternatives 2, 3, 4, 5, and 6.*

It is also important to reiterate on the following fact that the CERCLA process was initiated back in 1997. Heretofore P&A submitted comments in response to the government’s solicitations for public comments. The record attests to the fact that in 1977, the U.S. Geological Survey identified high levels of selenium contamination, in the Phosphoria Formation in Southeastern Idaho, in its programmatic Environmental Impact Statement. However, the toxic results of this widespread contamination surfaced in 1996 at Dry Valley Mine site, and in 1997 at the Conda Mine site, resulting in the death of hundreds of animals from selenium poisoning. Albeit, it has been more than 13 years since the CERCLA proceeding was initiated, and yet the government has not only failed to provide a viable solution to the existing phosphate mining-selenium disaster, it has actually permitted thousands of acres of new phosphate mining activities, at mine sites where remediation and cleanup has yet to be facilitated. It took government/industry 13 years to conjure up the co-called “early action-cleanup plan”, which essentially is a well-known method that involves slope stabilization, containment, and monitoring, which, historically, has had its own fair share of problems.

Response 1: The Agencies determined that an early cleanup action is warranted at this ODA because the ODA is unstable, it has significantly contaminated surface water and shallow groundwater, and because releases from the ODA are impacting adjacent private property. A portion of the proposed action is a “stabilizing action.” The goal of stabilizing the ODA against the risk of slope failure or further erosion is one of the primary objectives this early action prior to completion of the site-wide RI/FS. The other main objective of the proposed action is to reduce infiltration through the ODA to help reduce the down-gradient concentrations of COPCs in the groundwater and surface water. The commenter is correct that the proposed action involves containment to reduce infiltration through the ODA waste rock and therefore minimize releases of contaminants. Containment is a cleanup technology commonly used at mining sites that have large surface areas. The term “early actions” is a common term used at CERCLA sites

for actions that are conducted early in the process to address imminent threats to human health and/or the environment on portions of the Site prior to completion of the RI/FS.

The Agencies appreciate the commenter's concern regarding the time elapsed since the first livestock mortality event. Now that the Agencies have RI/FS agreements in place with several mining companies, including at the Conda/Woodall site, we are looking forward to greater progress at the sites than has been achieved to date.

PS Comment 2: *EPA, DEQ, and Simplot, assert that the “preferred alternative – 4” will reduce the levels of selenium and other toxic contaminants. However, neither provide tried and proven “scientific data” to quantify the reduction(s) that are purportedly to be realized, nor the documentation that supports the fact that such an alternative is a viable long-term remedy to ensure “compliance” with the water quality objectives/standards pursuant to the provisions of the Clean Water Act (CWA).*

Response 2: The early action is a source control action to reduce erosion and the risk of slope failure and to reduce (not eliminate) the quantity of infiltration that percolates through the ODA. Therefore, the early action is not expected to result in meeting groundwater and surface water quality standards down-gradient of the ODA. Post removal action performance monitoring will provide information that will be used to determine if additional cleanup actions are required to address residual contaminant loading in surface water and shallow groundwater down-gradient from the ODA. If needed, these additional actions will be evaluated in the FS for the Conda/Woodall Mountain Mine.

Further, it is true that the EE/CA did not provide quantitative estimates of the reductions in groundwater and surface water flows, COPC concentrations, and loads down-gradient from the Pedro Creek ODA. There are no available scientific methodologies for making such predictions and there are too many uncertainties associated with quantitative estimates of this sort. The EE/CA did include estimates of infiltration reduction because there are several predictive tools available for making quantitative estimates of infiltration reduction. The HELP model used is one of the commonly available and accepted models for making these estimates. However, there is uncertainty regarding the output of the HELP model because a number of assumptions and inputs to the model must use estimates based on data drawn from literature and professional judgment. The HELP model can be used to determine the relative potential differences in effectiveness among the alternatives. The model can reasonably assume that relative reductions in infiltration will result in similar relative reductions in down-gradient loads. The only way to definitively determine the actual reductions in down-gradient COPC concentrations and loads is to construct the early action and monitor the effectiveness. Even with that monitoring, there will be variability in effectiveness depending on season, year, and normal meteorological variability. The uncertainties associated with effectiveness predictions are one of the reasons that the Agencies are proposing this early action. Following implementation of the early action and monitoring for a few seasons, additional actions necessary to achieve water quality standards (for example, collection and treatment down-gradient from the toe of the ODA) can be much more appropriately determined.

PS Comment 3: *At this time, it is unclear as to whether the model and/or the assumptions provided by Simplot's consultant have either been peer reviewed or substantiated with any real*

degree of scientific certainty. However, what is evident, prefaced on its own statements, Alternative 4, would “reduce” the releases of COPCs to groundwater and surface water, but it does not provide assurances that compliance with the provisions of the CWA will be obtainable; either from the site specific or regional wide perspective.

Response 3: The HELP model used to estimate infiltration reduction was originally developed in the 1990s at the U.S. Army Corps of Engineers Waterways Experiment Station to support the RCRA and Superfund Programs, and has been updated several times. It has been extensively peer reviewed and is recommended by EPA for evaluating closure designs of hazardous waste management facilities. The primary purpose of the model is to assist in the evaluation and comparison of alternatives. The HELP model input assumptions used for the infiltration reduction predictions at the Pedro Creek ODA were reviewed by the Agencies and determined to be reasonable and appropriate, given the uncertainties associated with the inputs.

PS Comment 4: *There are still valid uncertainties relative to the basis and “scientific” quantification of the 85 percent reduction of selenium purportedly to be realized by the implementation of Alternative 4, enumerated by J.R. Simplot’s consultants. Even in the absence of such data, and even with the suggested assurances that additional water quality monitoring or related treatment action “may be” considered, at some later date, post RS/RI studies; notwithstanding, even IF an 85 percent reduction is to be realized from the “stabilization” and “containment” effort, as proposed on the 60 acre Pedro Creek ODA, neither this effort nor any other “action” taken or proposed by the government or the industry provides the basis in fact that water quality standards for surface and or ground water will be complied with now or anytime in the foreseeable future. In fact, the rhetoric “purportedly” being espoused by the government and industry is that in order to meet the water quality standards there would have to be as much as a 99 percent reduction in selenium discharges to reach compliance; which, some entities claim is not only cost prohibitive, but with current technology may not be obtainable.*

It would be disingenuous to refer to the “plan” as even a “stop-gap” measure, more aptly stated, it is a “top-gap” measure, which negates the “big picture” government-industry-induced decade in the making selenium “time-bomb” disaster, by attempting to showcase about 60 acres of “overburden disposal areas” (ODA) out of tens-of-thousands of contaminated acres, as representing a meaningful step forward. Conversely, it is apropos to remind EPA and DEQ et al that it has been 13 years since the CERCLA process was initiated, as a result of the death of livestock, grazing on public and private land, at South Maybe Mine and the Conda Mine sites, in southeastern Idaho, which is within the boundaries of the U.S. Western Phosphate Field.

Response 4: The Agencies appreciate the commenter’s concern regarding the time elapsed since the first livestock mortality event. Now that the Agencies have RI/FS agreements in place with several mining companies, including at the Conda/Woodall Site, we are looking forward to greater progress at the sites than has been achieved to date. As stated in response to comment PS Comment 2, the Pedro Creek early action is a source control action and is not expected to result in meeting groundwater and/or surface water standards down-gradient of the ODA. The purpose of the early action is to reduce the risk of slope failure and to reduce the quantity of meteoric water that infiltrates through the ODA. Post removal action performance monitoring will provide information that will be used to determine if additional cleanup actions are required to address

residual contaminant loading in surface water and shallow groundwater from the ODA as well as selenium uptake into vegetation. If needed, these additional actions will be evaluated in the FS for the Conda/Woodall Mountain Mine.

There are significant uncertainties associated with predicting the overall effectiveness of the early action at reducing flows, COPC concentrations and loads in the groundwater and surface water down-gradient from the ODA (see the response to PS Comment 2 and the response to ICL Comment 6 above). Those uncertainties are one of the reasons that the Agencies have proposed the early action as the first source control action in what is, essentially, a phased approach to the cleanup of the Pedro Creek ODA. This phased approach is commonly used at CERCLA sites when it is impossible to determine the effectiveness of the primary source control actions. The Agencies have determined through considerable experience at other sites that the phased approach can result in much more effective and cost-effective solutions. The typical steps in the phased approach include: 1) evaluate and select source control alternative(s); 2) implement the selective source control action; 3) monitor the effectiveness of the source control action(s); 4) evaluate alternatives to address residual loads; and 5) implement actions to address the residual loads. The Agencies agree that it may be unlikely that any of the early action alternatives could achieve load reductions sufficient to meet the down-gradient water quality standards. Therefore, the RI/FS will address the residual loads following implementation of the early action. This process can result in significantly greater effectiveness of the additional actions.

PS Comment 5: *As stated, the selenium-laden water quality contamination surfaced in 1996-1997, when livestock were killed because of selenium poisoning; although a myriad of studies have been conducted, and millions of dollars have been expended, very little effective remediation, if any at all, has been realized or undertaken. In the interim, government continues to sanction phosphate mining expansion, on both public and private property, without providing assurances that the “responsible parties” will mitigate and/or alleviate the water quality contamination to be compliant with the provisions of the Clean Water Act, which, some officials claim, will take hundreds of years to clean up. The Government/industry efforts, to date, have actually undermined the confidence of those participants who are cognizant of the subject matter.*

In any and all future “actions,” notices or invitations for public comment and/or involvement, please notify Planetary Solutionaries as early as possible, and it would be a good idea to give the public ample time to review and comment on the subject. Lastly, accessing information at the websites provided in EPA and DEQ “Fact Sheet” is extremely difficult and unnecessarily challenging. It might be helpful if the information was more readily available and user friendly.

Response 5: The Agencies appreciate the commenter’s concern regarding the time elapsed since the first livestock mortality event. However, permitting new mines and/or developing a comprehensive strategy to bring the Blackfoot River back into compliance with all Clean Water Act requirements is beyond the scope of the Conda/Woodall Mine CERCLA action, although the proposed early action should improve surface water quality in Pedro Creek which ultimately drains into the Blackfoot River. Now that the Agencies have RI/FS agreements in place with several mining companies, including at the Conda/Woodall Site, we are looking forward to greater progress at the sites than has been achieved to date.

The Agencies regret that the commenter had difficulty downloading information from the DEQ website. Planetary Solutionaries has been added to the project mailing list so that any future fact sheets/notices will be sent directly when issued. Upon request, EPA and IDEQ can provide Planetary Solutionaries deliverables (for example, Remedial Investigation Report, Risk Assessment report etc.) as they are finalized throughout the RI/FS process.

Comments from Roger Turner (RT)

RT Comment 1: *The ARARs, Eco. Risk evaluation, & Table 2.2 all should be revised for Greater Sage-Grouse protection as existing documents fail to acknowledge USFWS determination that this species warrants listing as an endangered species. (Sage Grouse habitat is present at this site.) Simplot should be required to take extra steps including mitigation to address Sage-Grouse habitat damage from this mine waste.*

Response 1: On March 5, 2010, the U.S. Fish and Wildlife Service (USFWS) issued a finding that sage grouse warranted listing under the Endangered Species Act (ESA), but the listing was precluded by other higher priorities. As such, sage grouse became a candidate species. Candidate species have no legal protections under the ESA. However, the USFWS asks that candidate species be considered during project development and implementation. Because they are a candidate species, the Agencies are not required to consult with the USFWS pursuant to the ESA regulations. However, the Agencies will consider impacts to sage grouse during design and implementation of the early action.

RT Comment 2: *Existing plans fail to protect re-distribution of COPC's from heavy equipment during construction. In all but the no-action alternative, thousands of tons of COPC- containing soils will be transferred and beaten down with heavy equipment, reducing soil particle size to result in significant spreading of COPC's by fugitive dust during construction. The Following Section under-reports this risk: "3.1- Site Model -Transport of waste shale dust is expected to be limited, considering the coarse grain size distribution of the ODA." This section is erroneous as it is common knowledge that such construction projects reduce particle size and increase fugitive dust. Air Monitoring and soil assessments should be carried out during the construction phase, not just afterwards, followed by a re-evaluation of COPC levels in water, soils, and flora, during and after construction. Water sprays should be required on ODA-overburden area during construction, with lined catch basins to capture runoff from sprays.*

Response 2: The Agencies agree that fugitive dust could be problematic during construction if not properly controlled. Best management practices (BMPs) will be required by the Agencies as part of the construction specifications for this project. The BMPs will include requirements for dust control using water sprays (or other dust palliatives) and for properly designed and constructed sediment basins to capture runoff from the sprays and other runoff during the construction process. The Agencies will also provide field oversight during the construction to assure that the BMPs are properly implemented and maintained.

RT Comment 3: *Alternative 6 should be selected because in every phosphate mine Simplot has carried out, they have caused releases that violate State & Federal standards, consequently, a higher level of protection at this stage will reduce the pollution levels (and costs to the State of*

Idaho) later. The flatter finished slopes and a geosynthetic liner, provided by Alt. 6 would provide the necessary improvement to the environment, slope stability and protection against erosion. Other alternatives lack this extra protection that is warranted in this ecosystem.

Response 3: The Agencies appreciate the comments and concerns expressed by Mr. Turner and have considered those comments and concerns in the selection of the removal action alternative for the early action for source control at the Pedro Creek ODA. However, Alternatives 3-6 all address the erosion and slope stability issues, and (in combination with potential future actions to address the residual contamination) can be expected to adequately address the down-gradient groundwater and surface water quality exceedances. Alternative 6 is not preferred by the Agencies because other alternatives are more easily implemented and can achieve equal protection of human health and the environment at lower costs.

Comments by Milt Ward (MW)

MW Comment 1: *First of all I'm thankful that, after more than 15 plus years of studies and knowing of the problems in this area, finally the government agencies have come up with a plan. It has been way too long getting to this point. It is plain to see that the people involved in the agencies weren't depending on their living and lifestyle to find a solution to the problem.*

Response 1: The Agencies appreciate the comments and concerns expressed by Mr. Ward, and will require Simplot to implement, maintain, and monitor the Pedro Creek early action in a manner that is protective of human health and the environment. Post removal action performance monitoring will provide information to determine if additional cleanup actions are required to address residual contamination at and/or down gradient from the ODA.

MW Comment 2: *I wish that one of the plans had been to move the selenium enriched waste back into the huge open pits that it was moved from to get to the phosphate ore.*

Response 2: The complete removal and relocation of the materials in the Pedro Creek ODA was considered in the EE/CA (see Section 6.1.1 of the EE/CA). Complete removal and relocation was screened out and not carried forward into the development of alternatives due to the following factors: 1) the significant short term adverse environmental impacts associated with implementation; 2) the extremely high costs of excavation, transport to a repository, and development of a suitable repository (the open pits would not be acceptable repositories without significant modifications to assure protection of the environment); and 3) other technologies would be equally as effective as removal and relocation at significantly lower costs.

MW Comment 3: *None of the alternatives clearly address the multiuse of grazing of wildlife or livestock. Fencing was mentioned but the wildlife do not have much respect for fences. Fencing in high mountain terrain is difficult to maintain and would require much upkeep.*

Response 3: For this early action the Agencies consider fencing to be only a temporary measure at the Pedro Creek ODA and at other areas of the site until the contaminated areas of the site can be returned to full use for wildlife and livestock. The fencing at the Pedro Creek ODA would be used to fence off surface waters or “hot spots” currently elevated in selenium to

preclude their use by livestock. In addition, temporary fencing may be used to preclude grazing while grasses are being established on the cover, and while those grasses are being evaluated to determine if selenium uptake by the grass mix is problematic. If monitoring indicates that the post-early action vegetation at the ODA poses an unacceptable risk to wildlife or livestock, additional CERCLA actions would be evaluated during the RI/FS.

MW Comment 4: *I feel that Alt. Five or Six should be used due the extra depth of the soil cover and the gravel and liner concept.*

Response 4: The Agencies have determined that neither the extra depth of cover of Alternative 5 nor the geomembrane liner of Alternative 6 will offer greater overall protectiveness than Alternative 4. None of the alternatives evaluated for the Pedro Creek ODA are projected to be able to meet down-gradient water quality goals in and of themselves. It would require greater than 99 percent load reduction to achieve the selenium water quality goals in the groundwater and surface water. The load-reduction effectiveness of any of the alternatives will be less than the infiltration-reduction effectiveness since there will still be some groundwater flowing through the ODA from up-gradient sources. Thus, even the most effective alternative (Alternative 6 is estimated to reduce infiltration by 99 percent) is not likely to be able to meet down-gradient water quality goals. Therefore, additional measures (for example, collection and treatment of groundwater and/or surface water) will likely need to be evaluated in the FS to address the residual COPC loads remaining after the early actions. The combination of the early action with future additional measures is expected to address exceedances of groundwater and surface water standards down-gradient from the Pedro Creek ODA. In addition, follow-up actions may be necessary to address plant uptake. Thus, Alternatives 4, 5, and 6 are essentially equivalent in terms of meeting the objectives of the early action.

Comment by Alicia Dredge

Comment: *I am pleased that after the elapse of so much time the IDEQ is seeing fit to take some action on the Pedro Creek situation. Although I believe that other alternatives would do a better job of remedying the situation than the preferred Alternative #4, I feel that some action is better than no action at all.*

Response: The Agencies appreciate the comments and concerns expressed by Ms. Dredge.

Comment by Elena M Robbins

Comment: *It is my feeling since there is no guarantee that any of the solutions will prevent further leakage or selenium contamination that solution 6 would be the one to go with. It offers the highest degree of protection. There has already been contamination on private ground when part of the dump site slipped off on private ground. I do not know what type of grass would be planted but I do not believe they can eradicate native plants such as gum weed which are high selenium absorbers. Also there is already contamination in the ground water which needs to be addressed.*

Response: Alternatives 3-6 address the erosion and slope stability issues, and (in combination with potential future actions to address the residual contamination) can address the down-gradient groundwater and surface water quality exceedances. The possibility exists that plants grown on the cover might grow through the clean cover soils to the ODA materials and uptake selenium. Therefore, a monitoring program will be implemented, in combination with the spraying of broad leaf herbicides, to determine if the grasses uptake selenium to problematic levels. If the grasses do uptake selenium to a degree that poses a risk to human health and the environment, then additional actions would be evaluated in the RI/FS to address that problem. Although the early action is expected to substantially improve down-gradient groundwater and surface water quality, the potential need for additional actions to address residual contamination from the ODA cannot be fully evaluated until the early action is implemented. In this phased approach, the need for any additional actions to address residual contamination in surface water and shallow groundwater will be evaluated on the basis of performance monitoring after the early action is complete.